Central Law Journal.

ESTABLISHED JANUARY, 1874.

VOL. 36 ST. LOUIS, MO., FEBRUARY 3, 1893. No. 5

Central Law Journal.

A LEGAL WEEKLY NEWSPAPER.
Published by

Central Law Journal Company,

919 OLIVE ST., ST. LOUIS, MO.

To whom all communication should be addressed.

Subscription price, FIVE DOLLARS per annum, in advance. Single numbers, TWENTY-FIVE CENTS.

Entered at the post-office, St. Louis, Mo., as second-class matter.

CONTENTS.

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The lawyers of every State which imposes an occupation tax upon the profession, will be interested in the recent Texas case—*Ex parte* Williams, 20 S. W. Rep. 580, involving the constitutionality of such tax. A member of the Galveston bar refused to pay a professional tax and was arrested. The United States Circuit Court released him under *habeas corpus* proceedings, but the Texas Court of Appeals has now decided that he must pay the tax. The principal contention was that the defendant, having been regularly admitted and qualified as an attorney at law, became an officer of the court and part of the judiciary of the State, and that the levy of the tax is in violation of the constitution which forbids one department to interfere with the powers of the others. This view the court refused to adopt, declaring that there is no implied exemption from taxation in favor of lawyers arising from the fact that they are officers of the court and part of the judicial system; that lawyers are not constitutional officers and that even if they were, they would be taxable, the State having a right to tax the salaries and compensation of her own officers. The opinion of the court, concurred in by all its members, is vigorous and quite plausible, but it will be of interest to note the conclusion of the United States Supreme Court, to which we understand, the case has been appealed, and where the additional point will be made that such a tax is invalid as being State taxation imposed upon officers of federal courts.

A bill has been introduced in the New York legislature, which has caused considerable commotion among the members of the New York bar. The bill provides that "any person who has qualified and served as a member of the legislature of the State for at least seven years, shall be on motion made to the general term, admitted and licensed to practice as an attorney and counselor in the courts of record of the State, without examination and without complying with any other requirement." A New York law newspaper derisively calls the products of such law "fiat lawyers" by analogy to the legislature process once in vogue of creating a dollar by stamping a piece of paper. And the same journal calls upon the members of the profession, without distinction of party, to combine to render impossible the adoption of a law "which would be an insult to themselves and a menace to the public." It can hardly be possible that such a measure can become a law. It would be strange indeed, if the insignia of special knowledge and the right to practice law should be conferred upon persons destitute of the special education indispensable to the legal profession. There is no reason to suppose that any person can acquire an adequate knowledge of law by any length of service in the legislature.

One of the recent amendments to the general corporation law of New York, is aimed at what are known as "tramp" corporations, and provides that no foreign stock corporation other than a moneyed corporation shall do business in the State without having first procured from the Secretary of State a certificate that it has complied with all the requirements of the law to authorize it to do business in the State, and that the business of the corporation to be carried on in the State is such as may be lawfully carried on by a corporation incorporated under the laws of the State, and that no such corporation now doing business in the State shall do business after the close of the year 1892 without procuring such certificate. In order to procure such certificate foreign corporations are required to file sworn copies of their charters or certificates of incorporation, and statements under their corporate seals setting forth the nature of their business and designating a place of business, which is to be its principal place of business within the State, and a person upon whom process against the corporation may be served.

An interesting opinion construing the new provisions was lately rendered by the State Attorney-General in the case of the application of an express company, which is authorized to do several kinds of business in another States for authorization to do an express business only in this State. The Attor-

ney-General, to whom the matter was referred by the Secretary of State, rendered an opinion to the effect that a certificate should be issued to the company. The Attorney-General suggests, in his opinion, that the policy of the State should be shaped so as to attract and invite the investment of capital rather than to repel it, and to admit lawful and properly organized corporations with their capital and enterprise. Foreign corporations, he says, are not to be regarded with suspicion, nor should unnecessary restraints be imposed upon their doing business in the State.

These conclusions are sound and might well be adopted by the legislatures and law officers of many States, whose policy has seemed to be of late in a contrary direction.

NOTES OF RECENT DECISIONS.

CARRIERS OF PASSENGERS—STREET CARS—TRANSFER OF PASSENGERS.—In Mahoney v. Detroit City Railway, decided by the Supreme Court of Michigan, defendant's street car in which plaintiff was riding, did not go to the end of the line—plaintiff's destination. The conductor informed him when the car stopped that he could get off, and take the next car. Plaintiff had paid his fare in the first car, but had no transfer or any evidence, except his own statement, that he was entitled to ride on the second car without paying. On his refusal to pay the fare demanded he was ejected, and brought an action for damages. It was held that he could not recover, even if he had a contract with defendant for a ride to the end of the line, because the conductor was not bound to accept his statement that he had such a contract, but it was plaintiff's duty to pay his fare, and seek redress for violation of the contract. Grant, J., says:

It is insisted by the plaintiff that he had a valid contract for carriage from the point where he took the car to Thirty-Third street, and that his ejectment from the car was, therefore, unlawful, and tortious. If it be granted that he had such a contract, still he had no evidence of it except his own statement, and the question is, what was his duty under the circumstances? If the conductor were under legal obligation to accept his statement that he had such a contract, then his removal was unlawful; otherwise it was not. Counsel has cited no authority, nor have I found one, which holds that a stranger may enter the car of either a railway or street-car company without any evidence that he has paid his fare, and secure passage, by his own statement to the conductor that he has previously paid it to some other authorized agent. It is the duty of the passenger to secure evidence of such payment, or to pay when his fare is demanded. The business of such companies cannot be carried on upon any other basis. This certainly is common sense and experience. Plaintiff's counsel cites the following authorities in support of his position: Hufford v. Railway Co., 64 Mich. 631, 31 N. W. Rep. 544; Hamilton v. Railway Co., 53 N. Y. 25; Carsten v. Railway Co., 44 Minn. 454, 47 N. W. Rep. 49; Pennsylvania Co. v. Bray, 125 Ind. 230, 25 N. E. Rep. 439; Railway Co. v. Fix, 88 Ind. 384; Railway Co. v. McDonough, 53 Ind. 289; Palmer v. Railroad, 3 S. C. 580; Burnham v. Railway Co., 63 Me. 298; Eddy v. Rider, 79 Tex. 57, 15 S. W. Rep. 113; Railway Co. v. Winter's Adm'r, 143 U. S. 60, 12 Sup. Ct. Rep. 356. An examination of these cases shows that in all accept Hamilton v. Railway Co. the plaintiff had procured and showed to the conductors either tickets or stop-over checks, showing that they had paid their fare, and the disputes arose over the right to ride upon such checks or tickets. It is unnecessary to review these authorities. In Hamilton v. Railway Co. the plaintiff was transferred from one car to another by the conductor; the first car, for some reason, not going through to the passenger's destination. It does not appear just how the transfer was made, but it is quite apparent that when the cars were near together the transfer of passengers was made, and the dispute was whether plaintiff was one of the passengers so transferred. In that case no evidence of transfer was required except the knowledge of the second conductor, whose duty it was to see and know who were so transferred. Under those circumstances, the passenger had the undoubted right to insist upon his passage without further payment. If plaintiff had purchased a "change off" or transfer, and lost it, or if he had purchased a ticket and lost it, or if either had been accidentally destroyed, it would be absurd to hold that he was entitled to a ride upon stating to the conductor that he had such transfer or ticket, but had lost it, or that it was accidentally destroyed. It is apparent that in the present case plaintiff possessed no other or different right from that which he would have possessed had he procured evidence of payment which had been lost or destroyed. In the one case his contract to ride would be complete, but the only written evidence he had would be lost; while in the other his contract might be equally good, but he had neither asked nor obtained any evidence thereof, to show to the conductor in charge of the other car or train, which must serve as a voucher in his settlement with the company. It is a novel doctrine that one may compel the agent of another to accept without question, and without opportunity to investigate, his verbal statement that he has a contract with his principal, and especially where frequent frauds upon the principal must inevitably result as the consequence of such a doctrine. It was the plaintiff's reasonable and clear duty to pay his fare, and seek redress from the defendant for a violation of his contract. In the case of Frederick v. Railroad Co., 37 Mich. 342, Justice Marston said: "There is but one rule which can safely be tolerated with any decent regard to the rights of railroad companies and passengers generally. As between the conductor and passenger, and the right of the latter to travel, the ticket produced must be conclusive evidence, and he must produce it when called upon, as the evidence of his right to the seat he claims." In Hufford v. Railway Co. plaintiff paid his fare. The language of the court in that case, that "it was the duty of the con-

ductor to accept the statement of the plaintiff until he found out that it was not true," must be held to apply to the circumstances of that case, where the plaintiff had a ticket. That statement would be most unreasonable in the case of one having no ticket. Several authorities in support of the rule above stated will be found cited in Frederick v. Railroad Co. The rule, and the reason therefor, are very ably stated in Bradshaw v. Railway Co., 135 Mass. 407, and are also supported by the following cases: Yorton v. Railway Co., 54 Wis. 234, 11 N. W. Rep. 482, and authorities there cited; Peabody v. Railway Co. (Or.), 26 Pac. Rep. 1053; MacKay v. Railway Co. (W. Va.), 11 S. E. Rep. 737.

INTERSTATE EXTRADITION — ARREST AND TRIAL FOR DIFFERENT CHARGES.—The case of People v. Cross, 32 N. E. Rep. 246, decided by the Court of Appeals of New York, is the latest addition to the controverted question as to the right to try an extradited prisoner on a different charge from that upon which he was extradited. The court held that under Const. U. S. art. 4, § 2, which requires a fugitive from justice, found in a State other than the one in which the crime was committed, to be surrendered on demand to the authorities of the State having jurisdiction of the offense, a fugitive who has been extradited on papers charging him with grand larceny may be tried under an indictment charging him with robbery, where the two charges are based on the same facts; there being nothing in the statutes of congress regulating interstate extradition, or in the laws of the State from which the fugitive was extradited, prohibiting an arrest and trial on different charges. O'Brien, J., says, *inter alia:*

Whether fugitives from justice extradited from foreign countries for offenses against the United States or any of the States could be tried, when brought within the proper jurisdiction, for any offense except that charged in the papers upon which the accused was surrendered by the foreign government, was until quite recently a question that produced much conflict of judicial authority. The Supreme Court of the United States has settled the question so far as concerns the obligations due to foreign nations, or to persons surrendered by them upon the demand of the federal government pursuant to treaty stipulations. U. S. v. Rauscher, 119 U. S. 407, 7 Sup. Ct. Rep. 234. In that case it appeared that Rauscher was surrendered by the government of Great Britain to the United States, upon its demand, for murder committed upon the high seas,—an offense of which its courts had jurisdiction,—and that he was subsequently tried and convicted of another and minor offense, namely, the cruel and inhuman punishment of the same seaman; and thus the act for which he was extradited and tried was the same.

It is argued by the learned counsel for the relator that this is a controlling authority in the case at bar. But we think that there is a material distinction between the facts and circumstances of that case and those disclosed by the record before us. It must be noted in the first place, that much stress was laid in that decision, and very properly, upon the fact that by the act of congress relating to extradition from foreign nations upon the application of the federal government it is expressly provided that the person surrendered shall not, when brought to this country, be tried for any other or different offense. This is the construction given to the act in the case last cited. 119 U. S. 433, 7 Sup. Ct. Rep. 234; Rev. St. U. S. § 5275. The act of congress passed in persuance of the federal constitution is the supreme law of the land, and this law protected Rauscher from trial for any other offense than the one upon which he was surrendered to this government by the British authorities. Moreover, the laws of Great Britain, from which jurisdiction the fugitive had been extradited, forbid the surrender, by that government, of persons charged with crime in other jurisdictions, to countries under whose laws the person demanded was liable to be tried for some other or different offense than that charged in the application for extradition (33 & 34 Vict. ch. 52; Adriance v. Lagrave, 59 N. Y. 115); and therefore, when the United States took the fugitive from the protection of these laws, its faith and honor were pledged, at least impliedly, to the effect that it would not permit its courts to try him for any other offense, even though it might be of a lesser grade than that upon which he was surrendered. Furthermore, the offense for which Rauscher was actually tried was not one for which Great Britain had bound itself, by the terms of the treaty with this country, to surrender him. It may very well be that, had he been charged in the application for extradition with only the offense for which he was tried, the government within whose jurisdiction he was found would have refused to surrender him to the authorities of the United States. It would therefore seem to be clear that his trial for another offense was in violation of the faith and honor of the government, as well as of an express law of congress. These considerations are not applicable to the case now before us. The obligation of the States of this Union to surrender to each other persons charged with crime is not founded upon comity or treaty, but upon the plain provisions of the federal constitution, found in article 4, § 2, as follows: "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he has fled, be delivered up to be removed to the State having jurisdiction of the crime." The obligation thus imposed upon the States is not, like treaties between independent nations, limited to specific offenses, but embraces all crime; and if the demanding state, when the fugitive is surrendered to it, cannot try him for any other offense than that charged in the warrant of extradition, that is a condition that must be implied, as it is not expressed in the instrument creating the obligation. Whether a fugitive from justice can be tried in the State from which he has fled, and to which he has been surrendered, for any other offense than that charged in the application to the government of the surrendering State, is a question upon which much conflict of authority is to be found in the courts of the several States, and in the inferior courts of the United States, as the federal supreme court has not yet, so far as I am informed, passed upon the point. We are asked in this case to hold that the rule must be the same in cases of interstate and international extradition, and that the principles

which control the latter have been announced in the Rauscher Case. We are not prepared to hold that the doctrine of that case is necessarily applicable to this. There are reasons for that decision that do not exist in this case, some of which we have already pointed out. It may be proper to add, also, that the act of congress regulating interstate extradition does not provide that the fugitive surrendered shall be exempt from trial upon any other charge while that regulating international extradition does, according to the construction given to it by the highest federal court, as we have seen. Rev. St. U. S. §§ 5278, 5279; Rauscher Case. *supra.* It was competent for congress to insert the same or a similar provision in the statute regulating extradition between the States as that regulating extradition from foreign nations, but it is somewhat significant that it has not done so. The States, though sovereign and supreme in their domestic affairs, and as to all matters not conferred by the constitution of the United States upon the federal government, bear relation to each other, with respect to the question now under consideration somewhat different from foreign and independent nations. Possibly, it would be competent for the States to enact that persons charged with crime in other States should not be taken from the jurisdiction where they are found, unless by the law of the demanding State they are not liable to be put upon trial for any other offense than that charged in the demand for his surrender. But I am not aware that any of the States have enacted such regulations. On the contrary, the highest court of Wisconsin—the State from which the relator was demanded and received—has held that a fugitive from justice, surrendered to another State upon demand, under the constitution, may be tried, in the State from which he fled, for any other offense of which its courts may have jurisdiction. State v. Stewart, 60 Wis. 587, 19 N. W. Rep. 429; Adriance v. Lagrave, *supra.* As this is the law of that State, it is difficult to see how any rule of comity has been disregarded by reason of what has been done in the case at bar.

PAYMENT OF SHARES IN PROPERTY OR LABOR.

§ 1. *Preliminary.* — The question, what shall be deemed a good payment for corporate shares as between the shareholder and a creditor of a corporation after the corporation has become insolvent, is one of the most important questions connected with the whole law of corporations. On the one hand, devices are resorted to by the promoters and managers of corporations by which the shares are issued upon insufficient, sham or simulated payments, whereby the corporation parades before the public an ostensible capital which does not exist, and thereby acquires a credit to which it is not entitled; on the other hand, investors frequently purchase shares in good faith, supposing that they are purchasing property only to discover when it is too late that they are purchasing a liability. Interest in the question is revived by two late decisions in Alabama. The constitution of that State contains a clause similar to that which is found either in the constitutions or in the statutes of many other States, that "no corporation shall issue stocks or bonds except for money, labor done, or money or property actually received, and that all fictitious increase of stock or indebtedness shall be void."[1] It is held that this does not require that the consideration received by a corporation for its bonds shall be equal to their face value—in other words, that for a corporation to sell its bonds for less than their face value does not create a debt which is "fictitious" within the meaning of this provision.[2] Upon parity of reasoning, it may be supposed that the same court would hold that a corporation might issue its share certificates at less than their par value. Judicial decisions upon the subject of the payment of shares take the widest possible range, from the recent decision of the British House of Lords to the effect that where a corporation, in order to tide over difficulties, issues preferred shares at less than their par value, and thereby succeeds in getting through its difficulties, so that its shares afterwards become worth much more than par, one who subsequently purchases its common stock may maintain a suit in equity against the company and the holder of such preferred shares to compel such holders to pay into the treasury of the company enough to make up their par value;[3] to the decision of the Supreme Court of the United States to the effect that a corporation under such circumstances may issue and sell any of its unissued shares for such price as it can get, and that whatever as between itself and the purchasers of such shares is agreed to be payment, is payment as against creditors of the company in the absence of circumstances of estoppel.[4]

§ 2. *General Doctrine that Shares must be Paid for at their Full Value in Money or in Money's Worth.*—Between these two extremes the general doctrine undoubtedly is that corporations cannot give away their unissued shares, but that such shares must be paid for by the persons to whom they are is-

[1] Alabama Const. Art. 14, Sec. 6.

[2] Nelson v. Hubbard (Ala.), 11 So. Rep. 428; Adams Cotton Mill v. Dimmick, *Ibid.*

[3] Ooregum Gold Mining Co. v. Roper (1892), A. C. 125 H. L.

[4] Handley v. Stutz, 139 U. S. 417.

sued, and by their assignees with notice, at their full value,[5] either in money or in money's worth.[6]

§ 3. *Payment in Property Generally Allowed.*—"Money's worth" as used in the expression of Lord Justice Giffard, means, of course, whatever is worth money to the corporation. The meaning is that a corporation can properly take in payment of its shares at a fair or reasonable value whatever it would have the power to purchase and to pay for out of its corporate funds. In such a case the law does not require the contracting parties to go through the idle performance of exchanging checks. It goes no farther than to require that the commodity which it receives in payment for its shares is such a commodity as it has the power to purchase, and that it is received by it in exchange for its shares at a fair valuation. With this qualification, payment of shares in property or services is very commonly allowed to be good;[7] and even in the face of a statute requiring one-half of the capital stock to be paid up in money at the time of organization, it has been held no ground to forfeit a charter that this requirement was not complied with, where it appeared that the corporation at the time when it commenced operations possessed property such as it was required to possess and use in the prosecution of the business for which it was created, of a value equal to fifty per cent. of its capital stock in lawful money.[8]

§ 4. *In What Kind of Property.*—It has been held that payment of shares may be made in solvent securities[9] or in land, labor, or materials useful for its business, or in satisfaction of damages or other liabilities.[10] A mining company, for instance, may take payment for its shares in mining lands;[11] and payment may be even made by the transfer of book accounts against mercantile customers, where such accounts are incidental to the business which the share-taker has transferred to the corporation.[12] The common case of incorporating a partnership by a form of proceeding under which the assets of the partnership are transferred to the corporation in exchange for its stock issued to the partners, is an illustration of the doctrine that shares may be paid for in property other than money; and it has been held that a corporation which has become the successor of a partnership to which the corporation is indebted for the business that it purchased, may receive the notes of the co-partnership which one of its stockholders holds, in payment for his share of the stock of the com-

[5] Upton v. Tribilcock, 91 U. S. 45; Chouteau v. Dean, 7 Mo. App. 210; Kehlor v. Lademan, 11 Mo. App. 550; Williams v. Evans, 87 Ala. 725, 6 South. Rep. 702. Compare New Orleans R. Co. v. Frank, 39 La. Ann. 707. That an arrangement among stockholders to pay for their shares *in dividends* is, if valid, rescinded by giving a *stock note*, see McDowell v. Steel Works, 124 Ill. 401. That the rule of the text does not exclude *bona fide compromises* with stockholders, see Whitaker v. Grummond, 68 Mich. 249; 2 Thomp. Corp. § 1553.

[6] For the expression "in money or in money's worth" so often used in judicial decisions dealing with this subject, we are probably indebted to Lord Justice Giffard in Drummond's Case, L. R. 4 Ch. 779, where he said that "if a man contracts to take shares, he must pay for them, to use a homely phrase, 'in meal or in malt.' He must either pay in money or in money's worth; if he pays in one or the other, that will be a satisfaction."

[7] Coffin v. Ransdell, 110 Ind. 417; Foreman v. Bigelow, 4 Cliff. (U. S.) 508; Phelan v. Hazard, 5 Dill. (U. S.) 45; Steacy v. Little Rock R. Co., 5 Dill. (U. S.) 348; Spargo's Case, L. R. 8 Ch. 407, 413; Drummond's Case, L. R. 4 Ch. 772; Maynard's Case, L. R. 9 Ch. 60; Ferrao's Case, L. R. 9 Ch. 355; Adamson's Case, L. R. 18 Eq. 670; Nichols' Case, L. R. 7 Ch. 533; and on appeal to H. L., 26 W. R. 819; Pell's Case, L. R. 5 Ch. 11; Woodfall's Case, 3 De. G. & Sm. 63; *Re* Baglan Hall Colliery Co., L. R. 5 Ch. 346; Schroeder's Case, L. R. 11 Eq. 131; Lohman v. New York, etc. R. Co., 2 Sandf. (N. Y.) 39. Searight v. Payne, 6 Lea (Tenn.), 283; Liebke v. Knapp, 79 Mo. 22, 28, 49 Am. Rep. 212; Coates' Case, L. R. 17 Eq. 169; Fothergill's Case, L. R. 8 Ch. 270; Brant v. Ehlen, 59 Md. 1; Baron De Beville's Case, L. R. 7 Eq. 11; Forbes and Judd's Case, L. R. 5 Ch. 270. These cases appear to resolve the doubts expressed in Pellatt's Case, L. R. 2 Ch. 527. See, also, Skinner v. Smith Moquette Loom Co., 56 Hun (N. Y.), 437; 31 N. Y. St. Rep. 448; 10 N. Y. Supp. 81. Where a corporation was organized on the basis of its stock being paid up in full and it appears that one-third was paid up in cash, and the remainder in a stock of goods whose sufficiency of value is not questioned, the requirements of the law are substantially complied with, and no cause of action in any form can be based upon a charge of non-payment of the capital stock. Kraft-Holmes Grocer Co. v. Crow, 36 Mo. App. 288.

[8] State v. Wood, 13 Mo. App. 139, 143.

[9] Blunt v. Walker, 11 Wis. 334, 78 Am. Dec. 709; Mc Rae v. Russell, 12 Ired. L. (N. C.) 224; Vermont Cent. R. v. Clayes, 21 Vt. 30.

[10] Phila., etc. R. Co. v. Hickman, 28 Pa. St. 318; Arapahoe Cattle & Land Co. v. Stevens, 13 Colo. 534, 22 Pac. Rep. 823; 28 Am. & Eng. Corp. Cas. 12; Searight v. Payne, 6 Lea (Tenn), 283; Carr v. Le Fevre, 27 Pa. St. 413 (Land.)

[11] Foreman v. Bigelow, 4 Cliff. (U. S.) 542; Phelan v. Hazard, 5 Dill. (U. S.) 45; Compare *Re* South Mountain, etc. Mining Co., 7 Sawy. (U. S.) 30.

[12] Gurney v. Union Transfer & S. Co., 25 Jones & S. (N. Y.) 444; 29 N. Y. State Rep. 274.

pany.[13] Nor is there any difficulty, in theory of law, in the way of the individual partners conveying the partnership assets to the corporation, although they may be the sole corporators therein. The corporation being an artificial being, distinct in theory of law from the individuals who compose it, it is not the case of a man trying to make a contract with himself.[14]

§ 5. *At what Valuation.*—Upon the question, what valuation of the property or services received by the corporation in payment of its shares, will be treated as full valuation in a proceeding by a creditor of the corporation against a shareholder, there are two rules, one of which may be called "the true value rule" and the other the "good faith rule." The true value rule is strictly the rule of the English courts, as we understand their decisions. When they use the expression "money's worth," they mean that the property which is turned over to the corporation in payment of its shares, must be turned over at a fair valuation, and they mean further, that whether or not it has been turned over at a fair valuation may become a subject of judicial inquiry in a proceeding to charge a shareholder in favor of creditors on the ground that his shares have not been fully paid for. This rule, as stated and applied in some of the American courts is, that payment of corporate stock in anything except money will not be regarded as payment, except to the extent of the true value of the property received in lieu of money, and regardless of the question of fraud.[15] Under either theory, where stockholders turn over property of a fictitious or imaginary value in payment of their shares, this is no payment as against creditors of the corporation.[16] Under this rule, in an action to charge a stockholder with the corporate debts up to the amount of his stock, because the stock has been issued for property not worth its par value, it is not necessary to prove that the trustees were guilty of fraudulent intent;[17] but the true inquiry will be what was the reasonable value, or the reasonable market value of the property conveyed or services rendered.[18] It is a just conclusion, where statutes or constitutional ordinances exist prohibiting the issue of stock except for money or property actually received, and requiring payments in property to be at its money value, that where payment of a stock subscription is made to a corporation at less than its actual value, the subscribers will be liable to creditors of the corporation in the event of its insolvency, for the difference between the actual value of the property conveyed and the amount of their subscriptions.[19] On the other hand, the meaning of the good faith rule is that, in order to enable a creditor of the corporation to charge a shareholder on the ground that his shares have not been fully paid, the property transferred by him to the corporation in payment of his shares must have been transferred and received at a fraudulent overvaluation. Roundly stated, the meaning is that while the transaction remains unimpeached for fraud, the courts, even where the rights of creditors are involved, will treat that as payment which the parties have agreed should be payment.[20]

§ 6. *Rule that the Over-valuation must be Fraudulent.*—So much confusion attends this subject that decisions are found even in the same court which divide upon the question—some of them seemingly supporting what the writer calls the "true value rule" and others seemingly supporting what he calls "the good faith rule." Many cases unite on the general proposition that where the governing statute

[13] Stoddard v. Shetucket, etc. Co., 34 Conn. 542.

[14] St. Louis, etc. R. Co. v. Tiernan, 37 Kan. 606, 15 Pac. Rep. 544.

[15] Libby v. Tobey, 82 Me. 397, 19 Atl. Rep. 904; Shickle v. Watts, 94 Mo. 410; Farmers Bank v. Gallaher, 43 Mo. App. 482. This doctrine that as against creditors of the corporation, transfers of property in payment of shares will only be regarded as payment to the extent of the actual value of the property, was laid down in an early case in the Supreme Court of New York, Tallmadge v. Fishkill Iron Co., 4 Barb. (N. Y.) 382. Later decisions seem to have modified the rule: Van Cott v. Van Brunt, 82 N. Y. 535, 542. Gamble v. Queens County Water Co., 123 N. Y. 91, 9 L. R. A. 527, 33 N. Y. St. Rep. 88; 8 Rail. & Corp. L. J. 484, 25 N. E. Rep. 201 (under N. Y. Laws 1848, Ch. 40, § 2); reversing 52 Hun (N. Y.), 166.

[16] Alling v. Wenzell, 27 Ill. App. 511.

[17] National Tube Works Co. v. Gilfillan, 124 N. Y. 302, 35 N. Y. St. Rep. 357, 9 Rail. & Corp. L. J. 270, 26 N. E. Rep. 538; affirming 46 Hun (N. Y.), 248.

[18] Shickle v. Watts, 94 Mo. 410.

[19] Elyton Land Co. v. Birmingham Warehouse etc. Co. (Ala.), 12 L. R. A. 307, 9 Rail. & Corp. L. J. 488; 9 South. Rep. 129.

[20] Phelan v. Hazard, 5 Dill (U. S.) 45, 6 Cent. L. J. 109; Waterhouse v. Jamieson, L. R. 2 H. L. (Sc.) 29; *Ex parte* Currie, 32 L. J. (Ch.) 57, 3 De G. J. & S. 367; 7 L. T. (N. S.) 486; Carling's Case, 4 Ch. Div. 115; McCracken v. McIntvre, 1 Duv. (Canada) 479; Foreman v. Bigelow, 4 Cliff. (U. S.) 542, 7 Cent. L. J. 430; Carr v. Le Fevre, 27 Pa. St. 413.

of a corporation authorizes its shares to be paid for in property instead of cash,[21] or where the law of the forum otherwise concedes this power to it,[22] the fact that they are so paid for, and at an over-valuation of the property, affords no ground of complaint to the creditors provided such payment is made and accepted in good faith.[23] The fraud here meant is actual fraud, in the sense of a dishonest purpose, and not constructive or theoretical fraud.[24] "While the contract stands unimpeached," said Judge Dillon, "the courts, even when the rights of creditors are involved, will treat that as a payment which the parties have agreed should be payment."[25] "The test," said Lord Justice Gifford, "to be applied is this: Could the company, by any proceeding, have set aside the transaction by which it was arranged that the owners of the colliery were to have paid up shares as the price of their interest in the colliery? And I say, on the evidence, that the company clearly could not. It was urged that the parties only agreed with themselves, and that therefore, there was no contract. But every company is started by parties agreeing among themselves, and it is idle to say that they have nobody to agree with. * * * It must be held that the persons who subscribed the memorandum of association have paid all that they are bound to pay. Creditors have no ground for complaint, for persons who are about to enter into transactions of magnitude with an individual, make inquiry into the state of his circumstances; and so, if they enter into them with a limited company, it is their own fault if they do not inquire into the nature of the memorandum and articles, and look to the register of shareholder."[26] As value is largely a matter of opinion, anticipation or belief,[27] and in the case under consideration the question being how much can probably be got out of the property by the corporation, it follows as a reasonable conclusion that the mere fact that the promoters or the contracting officers of the corporation put too high an estimate on the property is not evidence of fraud, though a gross and obvious over-valuation would be.[28] Another court has reasoned that, to justify the finding of fraud in such a case there must be either an actual fraudulent intent, or such reckless conduct as would indicate without explanation, an intent to defraud.[29] The general understanding of the courts seems to be that it is open to the creditor to show that the property transferred and received in payment of the shares was transferred and received at a fraudulent over-valuation, in whatever proceeding the law of the particular jurisdiction gives to charge the shareholder in respect of the debt due to him by the corporation. There is, however, a view seemingly confined to two or three decisions, that the creditors of the corporation cannot charge the stockholder with the difference between the agreed and the actual value of the property delivered in payment of his shares, until the transaction has been impeached for fraud in a direct proceeding.[30] But it does not appear from these decisions what proceeding the creditor of the corporation is expected to take in order to impeach the transaction—whether a bill in equity in which the corporation, the directors and the shareholders are made parties, or what.

[21] Coit v. Gold, etc. Co., 119 U. S. 343.

[22] Liebke v. Knapp, 79 Mo. 22, 49 Am. Rep. 212.

[23] Young v. Erie Iron Co., 65 Mich. 111, 31 N. W. Rep. 814, 8 West. Rep. 153; Phelan v. Hazard, 5 Dill. (U. S.) 45; Coffin v. Ransdell, 110 Ind. 417; Whitehill v. Jacobs, 75 Wis. 474, 44 N. W. Rep. 630; Dodge v. Havemeyer, 42 Hun (N. Y.), 659 mem., 4 N. Y. St. 561; Gamble v. Queens County Water Co., 123 N. Y. 91; 9 L. R. A. 527; 31 Am. & Eng. Corp. Cas. 313; 25 Abb. N. Cas. 410; 33 N. Y. St. Rep. 88; 8 Rail. & Corp. L. J. 484; 25 N. E. Rep. 201 (rev'g 52 Hun, 166; 23 N. Y. St. Rep. 409; 5 N. Y. Sup. 124); Bickley v. Schlag, 46 N. J. Eq. 533; 20 Atl. Rep. 250; 8 Rail. & Corp. L. J. 290; 31 Am. & Eng. Corp. Cas. 523; Fort Madison Bank v. Alden, 129 U. S. 372, 32 L. ed. 725; 5 Rail. & Corp. L. J. 423; 9 Sup. Ct. Rep. 332.

[24] Whitehill v. Jacobs, 75 Wis. 474, 44 N. W. Rep. 630; Fort Madison Bank v. Alden, 129 U. S. 372, 32 L ed. 725; 5 Rail. & Corp. L. J. 423; 9 Sup. Ct. Rep. 332; Young v. Erie Iron Co., 65 Mich. 111, 31 N. W. Rep. 814.

[25] Phelan v. Hazard, 5 Dill. (U. S.) 45.

[26] Baglan v. Hall Colliery Co., L. R. 5 Ch. 346. To the same general effect are Pells' Case, L. R. 5 Ch. 11; Forbes & Judd's Case, L. R. 5 Ch. 270; Fothergill's Case, 8 *Id.* 270; Prichard's Case, *Id.* 956; Schroeder's Case, L. R. 11 Ex. 131; Spargo's Case, L. R. 8 Ch. 407; Coates' Case, L. R. 17 Eq. 169, 177.

[27] That value is ordinarily proved by the *opinions* of witnesses, which opinions are not conclusive on the triers of the fact, see Winkler v. Railroad Co., 21 Mo. App. 109; 1 Thomp. Trials, §§ 380, 600, 1122.

[28] Coit v. Gold, etc. Co., 119 U. S. 343; Carr v. Le Fevre, 27 Pa. St. 413.

[29] Young v. Erie Iron Co, 65 Mich. 111, 31 N. W. Rep. 814, 8 West. Rep. 153. See, also, Boynton v. Hatch, 47 N. Y. 225; VanCott v. Van Brunt, 82 N. Y. 535.

[30] Coffin v. Ransdell, 110 Ind. 417, 424; Phelan v. Hazard, 5 Dill (U. S.), 45; Brant v. Ehlen, 59 Md. 1. Compare Coit v. Gold, etc. Co., 119 U. S. 343.

§ 7. *Rights of Bona Fide Purchasers of Unpaid Shares.*—A share certificate is a continuing affirmation by the corporation to all the world that the person therein named is the owner of a number of shares of the capital stock of the corporation therein stated transferable on the books of the corporation in the manner therein stated.[31] While it is not in a strict sense negotiable paper,[32] it approaches very nearly to the rank of a negotiable instrument,[33] so that in many cases the transferee of it in good faith and for value acquires, both against his transferor[34] and against the corporation,[35] on the principle of estoppel, higher rights than he would have acquired if he had purchased with notice. The doctrine of the best courts, English and American, founded on the most obvious conceptions of justice and commercial convenience, now is that where the shares of a corporation are offered for sale by the person named in the certificate, an intending purchaser is not required to look beyond the recitals of the certificate in regard to the title of the vendor or the equities of the corporation, or to suspect fraud in the issuing or payment of the shares, where all seems fair and honest; nor is he bound, for any such purpose, to make an examination of the books of the corporation.[36] When, therefore, a corporation issues shares as paid up, treats them as such, and as such puts them on the market, the certificates stating that they are paid up, a person who innocently purchases them, under the belief that they are paid up, will not be chargeable with liability to the creditors of the company in case the representations of the company that the shares are paid up, should turn out to be false. Such a person is not required to suspect fraud and to institute inquiries where all seems fair and conformable to the requirments of the law. The corporation has no remedy against him *ex contractu*, for it is estopped by its own contract; it has no remedy against him *ex delicto*, for he has done no wrong.[37] Its remedy is against the guilty perpetrators of the fraud. Some of the courts have carried the principle so far as to hold that where shares of corporate stock are issued as paid up shares, an innocent purchaser of the same, who takes them in good faith as paid up, in the absence of any circumstance to put him upon inquiry, and when the books of the corporation would give no notice that the stock was not paid up, is not liable to creditors of the corporation for the amount unpaid; nor is it necessary in such a case, the certificates being in the usual form, that, in order that they should be regarded as paid up in the hands of an innocent purchaser, they should state on their face that they were fully paid up.[38] Much more could be said upon this subject, but further discussion of it is precluded by the limits of an article already too long.

SEYMOUR D. THOMPSON.

St. Louis, Mo.

[31] Joslyn v. St. Paul Distilling Co., 44 Minn. 183; Kisterbock's Appeal, 127 Pa. St. 601, 14 Am. St. Rep. 868; Keller v. Eureka Brick Co., 43 Mo. App. 84.

[32] 2 Thomp. Corp. §2587.

[33] *Ibid.* §§ 2589, 2590.

[34] *Ibid.* § 2593.

[35] *Ibid.* § 2595.

[36] Lowry v. Commercial, etc. Bank, Taney (U. S.) 310; Foreman v. Bigelow, 4 Cliff. (U. S.) 508; Salisbury Mills v. Townsend, 109 Mass. 115; Bayard v. Farmers Bank, 52 Pa. St. 232.

[37] Waterhouse v. Jamieson, L. R. 2 Sc. App. 29; McCracken v. McIntyre, 1 Duval (Canada), 479; Foreman v. Bigelow, 4 Cliff. (U. S.) 508, 18 Nat. Bank. Reg. 457; 7 Cent. L. J. 430; Brant v. Ehlen, 59 Md. 1; Phelan v. Hazard, 5 Dill. (U. S.) 45; *Re* British Farmers, etc. R. Co. 7 Ch. Div. 533, affirmed in H. L. *sub nom*, Burkinshaw v. Nichols, 26 Weekly Rep. 819.

[38] Keystone Bridge Co. v. McCluney, 8 Mo. App. 496; cited and referred to by the Supreme Court of Missouri in Skrainka v. Allen, 76 Mo. 384, 392. See, also, Erskine v. Loewenstein, 11 Mo. App. 595; West Nashville Planing Mill Co. v. Nashville Sav. Bank, 86 Tenn. 252, 6 Am. St. Rep. 835; 6 S. W. Rep. 340. Compare Sturges v. Stetson, 1 Biss. (U. S.) 246, 10 Meyer Fed. Dec., § 149. In the case first cited the St. Louis Court of Appeals relied on Foreman v. Bigelow, 4 Cliff. (U. S.) 508.

CONFLICT OF LAWS—INJUNCTION—EXEMPTION.

ALLEN V. BUCHANAN.

Supreme Court of Alabama, Dec. 30, 1892.

A court of equity, in a suit between two citizens of the State, has power to restrain the defendant, by injunction, from seeking to reach by attachment and garnishment, in a foreign jurisdiction, a debt due to the plaintiff, which under the law of their domicile is exempt from execution.

MCCLELLAN, J.: The bill in this case is filed by W. R. Buchanan, who is a resident citizen of Alabama, against Claude A. Allen, William Redd and H. Lee Brown, who are also resident citizens of this State, doing business as partners under the firm name of Allen, Redd & Co., and against the Traders' Insurance Company of New Orleans, which is alleged to be a citizen of the State of

Louisiana. Its purpose is to restrain the prosecution of a suit by said Allen, Redd & Co. in a civil court of the parish of Orleans in this State of Louisiana, against the complainant, the object of which is to collect from said insurance company certain $600 which said company owes complainant; the company being also before that court by process analogous to a summons in garnishment under our laws. The abstract equity of the present bill is rested on the fact that the fund thus sought to be subjected to the debt of Allen, Redd & Co., is exempted to the complainant under the laws of Alabama, where all the parties reside, and is so claimed in the bill; and it is, moreover, averred that, prior to the institution of the proceeding in Louisiana, Allen, Redd & Co. sued said Buchanan on the same cause of action in this State, and summoned said insurance company to answer whether and in what sum it was indebted to the defendant in that action; that the garnishee appeared and answered indebtedness in the sum of $600, that thereupon the defendant claimed the same as exempted to him; and that, plaintiffs having failed to contest said claim of exemption, the Birmingham city court, in which the case was pending, "adjudged that complainant was entitled to the amount so due as exempt, and discharged the same from said garnishment." This is the fund which is now involved in the proceeding in Louisiana.

It cannot be doubted that on the averments of the bill the complainant is legally and equitably entitled to the fund. Under the laws of Alabama, he has the same right to demand and receive the sum due him from the insurance company, as against Allen, Redd & Co. as if they had no claim whatever against him. Nor is it material what effect, or whether any effect, is accorded to the judgment of the city court of Birmingham, discharging the garnishee and holding this money to be exempted to Buchanan, the defendant in that suit and the complainant here. If there had been no previous suit involving the question of exemption, and no attempt to adjudicate that question, in the courts of Alabama, the complainant, on the facts he avers, would be and is still entitled, under our laws, to this fund, over any claim Allen, Redd & Co. can have to it, if the averments of the bill as to complainant's not having waived his exemptions against their debt be true. And the case may in this respect stand, on the averments of the bill, on the claim of exemption therein brought forward, wholly regardless of whether any previous claim had been advanced and adjudged in favor of complainant or not. Zelnicker v. Brigham, 74 Ala. 598. Complainant's right to this money exists, however, only by force of the local law of Alabama, which has no extra-territoral operation, and which will not be enforced in the courts of Louisiana. But the fact that this legal right of his cannot be asserted in in the courts of that State, since one jurisdiction does not enforce the exemption statutes of another, so far from militating against the equity of this bill, is essentially the basis of its equity. It can make no difference, as respects the abstract rights of these parties in and under the law of Alabama, whether they are cognizable in foreign courts or not. Whether so or not, they are the same here, and the parties are the more entitled to have them declared and effectuated here, so far as our courts are capable of declaring and effectuating them, because they cannot be asserted in the foreign court which is undertaking to deal with the subject-matter through its judgments *inter partes*, regardless of the rights of the parties under our laws. In other words, the complainant has a right to this money, which, though it is a legal right, he cannot assert in the forum where the respondents are seeking to foreclose it, and where it will be foreclosed, unless he can invoke the powers of the chancery court to restrain their efforts to that end. This being his only remedy to effectuate his legal rights, the demurrers to the bill, which go upon the grouud that complainant has an adequate remedy at law, were properly overruled.

The main question presented on this appeal, however, is as to the power of the court of chancery of one State, having jurisdiction of the parties, to grant relief *inter partes* in respect of a matter which is situated beyond the territorial jurisdiction of the court, in another State or country. The authorities overwhelmingly support such jurisdiction. Mr. Pomeroy, upon this subject, says: "Where the subject-matter is situated within another State or country, but the parties are within the jurisdiction of the court, any suit may be maintained and remedy granted which directly affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree, and the defendant is ordered to do or to refrain from certain acts towards it, and it is thus ultimately, but indirectly, affected by the relief granted. As examples of this rule, suits for specific preformance of contracts, for the enforcement of express or implied trusts, for relief on the ground of fraud, actual or constructive, for the final accounting and settlement of a partnership, and the like, may be brought in any State where jurisdiction of the defendant's person is obtained, although the land or other subject-matter is situated in another State, or even in a foreign country." 3 Pom. Eq. Jur. § 1318. And Judge Story says: "In general, the fact that the property is not within the jurisdiction constitutes no bar to a proceeding in a court of equity, if the person is within the jurisdiction, for a court of equity acts upon the person; or to use the appropriate phrase, *æquitas ægit in personam*." Story, Eq. Pl. § 489. And to like effect are the following adjudged cases: Penn v. Lord Baltimore, 1 Ves. Sr. 444; Guild v. Guild, 16 Ala. 121; McGee v. Sweeney, 84 Cal. 100. 23 Pac. Rep. 1117; Montgomery v. U. S., 36 Fed. Rep. 4; Davis v. Morriss, 76 Va. 21; Carver v. Peck, 131 Mass. 292; Bethell v. Bethell, 92 Ind. 318; Baker v. Rockabrand, 118

Ill. 365, 8 N. E. Rep. 456; Johnson v. Gibson, 116 Ill., 294, 6 N. E. Rep. 205; Poindexter v. Burwell, 82 Va. 507, —among many others cited in note to section 1318, Pom. Eq. Jur.

And so long as the relief sought may be worked out directly on the person of the defendant, and indirectly through his person on property in a foreign jurnsdiction, it is immaterial what form the decree assumes, —whether it is affirmative or negative in its effect, whether it commands an act to be done, as, for instance, the execution of a conveyance, or restrains the doing of an act, as, for instance, the alienation of property, the institution prosecution of suits in other States, and the like. Thus it is said by Judge Story, after declaring that nothing can be clearer than the proposition that the courts of one country cannot exercise any control of those of another: "But although the courts of one country have no authority to stay proceedings in the courts of another, they have an undoubted authority to control all persons and things within their territotorial limits, When, therefore, both parties to a suit in a foreign country, are resident within the territorial limits of another country, the courts of equity in the latter may act *in personam* upon these parties, and direct them, by injunction, to proceed no further in such suit. In such case these courts act upon acknowledged principles of public law in regard to jurisdiction. They do not pretend to direct or control the foreign court, but, without regard to the situation of the subject-matter of the dispute, they consider the equities, between the parties, and decree *in personam* according to those equities and enforce obedience to the decree in process *in personam*." 2 Story, Eq. Jur. § 899. And the same doctrine is announced by Mr. High, who in conclusion says: "While, therefore, the court will assume no control over the course of the proceedings in the foreign tribunal, it may and will interfere to prevent those who are amenable to its own process from instituting or carrying on suits in other States which will result in injury and fraud. Thus, where a creditor and debtor are both citizens in and residents of the same State, and the creditor institutes an action of attachment and garnishee proceeding in another State to reach credits due the debtor there, and which would have been exempt from attachment or legal process under the laws of the State where parties are domiciled [which is precisely the case at bar], the creditor may be enjoined from further prosecuting his action in the foreign State; it being regarded as an effort to evade the laws of his domicile." 1 High, Inj. §§ 103–107. These tests are amply sustained by the following adjudged cases, some of which are on all fours with this case in their facts, while the others are strictly analogous: Keyser v. Rice, 47 Md. 203; Snook v. Snetzer, 25 Ohio St. 516; Pickett v. Fergusun, 45 Ark. 177; Manufacturing Co. v. Worster, 23 N. H. 470; Vermont & C. R. Co. v. Foster, 4 Allen, 545; Proctor v. Bank, 152 Mass. 223, 25 N. E. Rep. 91; Cunningham v. Butler, 142 Mass. 47, 6 N. E. Rep. 782, 56 Amer. Rep. 657, and notes, 663–665; Wilson v. Joseph, 107 Ind. 490, 8 N. E. Rep. 616.

Some decided cases maintain the contrary doctrine. Our attention has been called to three of these, namely, Mead v. Merritt, 2 Paige, 402; Williams v. Ayrault, 31 Barb. 364; Peck v. Jenness, 7 How. 612. These cases appear to have followed the reasoning and judgment of Lord Eldon in Kennedy v. Earl of Cassilis, 2 Swanst. 313, which has ceased to be authority in England; the power of the chancery court to restrain persons of whom it has jurisdiction from the prosecution of suits in foreign countries being now recognized and established in that country. 1 High, Inj. § 103. Moreover, what was said by the Supreme Court of the United States in Peck v. Jenness, *supra*, was a *dictum*, inasmuch as the lack of power in a federal court to restrain parties in the prosecution of suits in State Courts, which was the question considered and decided, results from, and is properly ascribed in that case to, the provision of the judiciary act of 1793, which expressly declares that a writ of injunction shall not be granted by a court of the United States to stay proceedings in any court of a State. The general doctrine invoked in this case, that the courts of one State may enjoin parties personally within their jurisdiction from prosecuting suits in the courts of another State, is now fully recognized by the Supreme Court of the United States, and held to be constitutional. Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. Rep. 269.

We hold, in accord with the overwhelming weight of authority, and with what we regard as the sounder reasoning that the chancery courts of this State have the power invoked by the present bill, and that the bill makes a proper case for its exercise. The decree overruling the demurrer is affirmed.

NOTE.—The principal case presents an apt illustration of the doctrine, which originally exclusively prevailed, that decrees and remedies in equity operate *in personam* upon the defendants and not *in rem* upon the subject-matter of the suit. The distinction grew out of the adoption by the early chancellors of the plan of ordering some act to be done, conveyance to be executed, instrument to be surrendered and canceled, or possession to be delivered, etc., and then, if necessary, coercing a compliance with the decree by fine and imprisonment of the defendant. This practice of acting, as they said, upon the consciences of defendants was probably established from prudential motives, to prevent conflict with courts of common-law which might have ensued had they assumed in their decrees to act directly upon property rights. In this country, however, the distinction has been generally distroyed by legislation, under which, where it is possible, a decree either operates *ex propio vigore* to create, transfer or vest an intended right, title, estate or interest, or else the act required to be done in order to accomplish the object of the decree is to be performed, by an officer of the court acting for and in the name of the party against whom the adjudication is made. 1 Pomeroy Eq. Jur. §§ 134, 135. But in those instances, where, as in the principal case, it is impos-

sible for the decree of the court to act directly upon the subject-matter of the controversy because of its location in another State or nation, while the parties are themselves within the jurisdiction, the power of the court to afford relief is not lessened, but it proceeds *in personam* in accordance with the ancient practice. Topp v. White, 12 Heisk. 165; Moore v. Yeager, 2 McAr. 465; Caldwell v. Carrington, 9 Pet. 86; Watkins v. Holman, 10 Pet. 25; Hawley v. James, 7 Paige, 213, 32 Am. Dec. 623; Sutphen v. Fowler, 9 Paige, 280; Newton v. Bronson, 13 N. Y. 587, 67 Am. Dec. 89; Bailey v. Rider, 10 N. Y. 363; Gardner v. Ogden, 22 N. Y. 332-339, 78 Am. Dec. 192; Pingree v. Coffin, 12 Gray, 304; Davis v. Parker, 14 Allen, 94; Brown v. Desmond, 10 Mass. 267. In such cases it is manifest that, where the relief prayed for is of such a character that when granted, it must act directly upon the subject-matter and cannot be exercised through the person of the defendant, the jurisdiction is exclusively in the courts of the State where the subject-matter of the suit is situated. For instance, in a suit to abate a nuisance (Mississippi, etc. R. Co. v. Ward, 2 Black, 485), a suit to determine the title to specific land (Massie v. Watts, 6 Cranch, 148), to prevent the infringement of exclusive rights granted under a foreign charter of incorporation (Northern Ind. R. Co. v. Michigan Cent R. Co., 15 How. 233, 5 McLean, 444), to foreclose mortgage of land (Farmer's Loan & Tr? Co., 55 Conn. 334, 3 Am. St. Rep. 53), for partition of lands (Wimer v. Wimer, 82 Va. 890), the court will not take jurisdiction, unless the nuisance, lands, etc., are located within the State. And in England, courts of equity have refused to take cognizance of a contested claim depending upon title to real estate situated in a foreign country, although the parties are residents of England.

It will be noted that in the principal case that both plaintiff and defendant were residents of Alabama. Where the defendant is not a resident of the jurisdiction, it is doubtful whether the court can, with propriety, make such a decree relating to a subject-matter in a foreign jurisdiction against him, although in the particular suit he may have been duly served with process, and in one instance, at least such jurisdiction has been declined. Wicks v. Caruthers, 13 Lea (Tenn.), 365.

A somewhat analogous question arises in proceeding under a writ of *habeas corpus*, where the respondent is within the jurisdiction, though the person restrained of his liberty is elsewhere. The better rule seems to be that the writ will lie under such circumstances. *Re* Stacy, 10 Johns. 327; United States v. Davis, 5 Cranch C. C. 622; Rivers v. Mitchell, 57 Iowa, 193. See, also, *Re* Jackson, 15 Mich. 440; Speer v. Davis, 38 Ind. 271.

CORRESPONDENCE.

CONSTITUTIONALITY OF STOCK KILLING LEGISLATION.

To the Editor of the Central Law Journal:

Your editorial in Vol. 35, p. 475, referring to a late decision of the Court of Appeals of Colorado, calls to my mind a decision of the Supreme Court of Indiana, made away back in 1856. In 1853, the legislature passed an act providing how owners of stock killed upon a railroad, might recover their value before a ustice of the peace. The act contained a provision that, if the defendant appealed and failed to reduce the judgment twenty per cent., the appellate court should give judgment for double the amount of the judgment below, and a docket fee of $5.00. Such a case was appealed to the Supreme court from Johnson county, and the judgment doubling the judgment before the justice of the peace, and taxing a docket fee was reversed, Judge Perkins writing the opinion. Considering the fact that said provision of the act was held unconstitutional, upon the ground that it was special legislation, one becomes astounded at the wonderful display of learning and research of the writer upon the natural rights of mankind, and their rights under and duties to their government, whatever its form may be. The opinion is in 8 Ind. 217, and covers twenty pages of the book. Judge Stewart, one of the judges, says: "Without approving or dissenting from the general course of discussion pursued in the above opinion, I concur in the conclusion."

As a curiously wrought production, considering the subject and occasion, it might prove interesting reading to the seeker after the rights and relations of man to his government.

Lawrenceburg, Ind. W. H. BAINBRIDGE.

BOOKS RECEIVED.

A Practical Treatise on the Law of Chattel Mortgages as Administered by the Courts of the United States. Complete and Exhaustive. By J. E. Cobbey, of the Beatrice, Neb., Bar; Author of "Law of Replevin," and Compiler of Consolidated Statutes of Nebraska. Vols. I and II. St. Paul Minn.: West Publishing Co. 1893.

An Abridgment of Military Law. By Lieut. Colonel W. Winthrop, Deputy Judge Advocate General, United States Army; Late Professor of Law, U. S. Military Academy. Second and Revised Edition. New York: John Wiley & Sons, 53 East Tenth Street. 1893.

The Principles of the American Law of Contracts at Law and in Equity. By John D. Lawson, B. C. L., LL. D., Professor of Common Law in the University of the State of Missouri, and Author of "Rights, Remedies and Practice," "The Law of Usages and Customs," "Leading Cases Simplified," etc., etc. St. Louis: The F. H. Thomas Law Book Co. 1893.

QUERIES ANSWERED.

QUERY NO. 1.

[*To be found in 36 Cent. L. J. p. 34.*]

If the statement contained in the applications are made warranties by the contract, then it is of no consequence whether the misrepresentation is material or has any connection with the cause of death. The company can successfully defend on the ground of fraud under such circumstances. If not warranties then the question of materiality of the misrepresentation affects the liability of the company. Cook on Life Ins. Secs. 14,15, 16, 17 and authorities cited; Johnson v. M. & N. B. Ins. Co. (Me.), 22 Atl. Rep. 107; Cobb v. Covenant Mut. B. Ass'n, 76 N. E. Rep. 230; Jeffries v. Ins. Co., 22 Wall. 47; Ins. Co. v. France, 91 U. S. 510.

M. C. PHILLIPS.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATION—Administrators—Appointment.—Under Gen. St. § 1893, providing that administration shall be granted "in the order following, viz: (1) To husband or wife; (2) then to the child or children,"—where a daughter had knowledge of the application of her stepbrother for letters of administration, and made no appearance at the proper time, she cannot, by an application to the probate court, have the letters revoked on the ground that the administrator was not the legitimate son of the deceased.—EX PARTE WHITE, S. Car., 16 S. E. Rep. 286.

2. ADMINISTRATION—Contingent Claims.—Where a lessor had covenanted to indemnify lessee from damages by water during his term, and the lessor died, a claim on the contract of lease for damages from water, accruing after the death of lessor, and after notice to present claims had expired, is a "contingent" claim, under Code Civil Proc. § 1493, which provides that "claims due, not due, or contingent must be presented to the administrator within the time limited in the notice;" and under section 1500, no action can be maintained on such a claim unless it is first presented to the administrator.—VERDIER v. ROACH, Cal., 31 Pac. Rep. 554.

3. ADVERSE POSSESSION. — Defendant in ejectment took possession of the land in dispute 20 years before the commencement of the suit, under a parol gift from her father. She cleared, cultivated, and fenced part of it, and used the rest of it in getting rails and firewood. Her father frequently said to her, and to others in her presence, that he had given the land to her: Held, that the evidence was sufficient to support defendant's claim of adverse possession.—LEE v. THOMPSON, Ala., 11 South. Rep. 672.

4. ADVERSE POSSESSION—Tenants in Common.—Though plaintiff and his grantor, under a deed purporting to convey the entire estate in land, paid taxes thereon for over 40 years, there is no presumption that they held the same adversely to defendant, who was owner of an interest therein as tenant in common by record title, where the land was unoccupied, and no use thereof made by either party.—WHITE v. BECKWITH, Conn., 25 Atl. Rep. 400.

5. APPEAL—Decree Entered on Stipulation.—A decree rendered by a court that had jurisdiction, on an agreement signed by the parties, stipulating for its entry, will not be reviewed.—INDIANAPOLIS, D. & W. RY. CO. v. SANDS, Ind., 32 N. E. Rep. 722.

6. APPEAL BOND — Demand.—An action cannot be maintained on an appeal bond given to stay a judgment for the delivery of certain hay, or for $299, the value thereof, the bond being conditioned, under Code Civil Proc. § 978, to pay the judgment if the appeal be dismissed, unless it is shown that an execution has been issued since the dismissal of the appeal, or a demand for the property made, or that a delivery thereof cannot be had, since it was necessary that this should appear before the money judgment could be payable.—PIEPER v. BEERS, Cal., 31 Pac. Rep. 562.

7. APPEAL FROM TERRITORIAL SUPREME COURT.—On an appeal from the supreme court of a territory the review is limited to determining whether the judgment or decree is supported by the findings of fact made and certified by the court in pursuance of the act of April 7, 1874, (18 St. at Large, p. 27), and whether there is any error in rulings, duly excepted to, on the admission or rejection of evidence, and does not extend to the question whether the evidence supports the findings of fact.—SAN PEDRO & CANON DEL AGUA CO. v. UNITED STATES, U. S. S. C., 13 S. C. Rep. 94.

8. APPEARANCE.—If a defendant who has been served with process applies for further time to plead, or by another unequivocal act submits himself to the jurisdiction of the court in the cause, it constitutes his appearance thereto.—STATE v. HORNER, N. J., 25 Atl. Rep. 386.

9. ATTACHMENT.—A statement in the return on a writ of attachment and in the copy served that the attachment was levied on "all the stock and goods in said defendant's store, situated on Main street," is not a sufficient description of the property, under Gen. St. § 907, which provides that the officer serving the process shall leave with the defendant an attested copy of the process and of his return thereon, describing any estate attached.—AHERN v. PURNELL, Conn., 25 Atl. Rep. 393.

10. ATTACHMENT—Dissolution.—P, in an action before a justice, attached certain logs, and obtained judgment, after which the proceedings were removed by *certiorari* to the circuit court: Held, that suing out the *certiorari* and giving the statutory bond for the payment of any judgment that might be rendered in the circuit court dissolved the attachment.—VANDERHOOF v. PRENDERGAST, Mich., 53 N. W. Rep. 792.

11. ATTACHMENT—Setting aside Conveyance.—Where a plaintiff in attachment chose to sue by foreign attachment when defendant was not a resident of the State, instead of by summons when defendant might have been found within the State, both modes of suit being provided by law, the choice of the former from motives of self-interest does not prove fraud on the part of plaintiff, and does not present any ground for an equity court to set aside a conveyance to plaintiff made by the auditor of the attachment suit.—HERBERT v. HERBERT, N. J., 25 Atl. Rep. 401.

12. ATTORNEY—Disbarment.—Where the acts charged against an attorney in a proceeding for disbarment are proved to have been committed, but the proof fails entirely to disclose any bad or fraudulent motive for the commission thereof, either from the act itself or from other circumstances, disbarment is not authorized.—STATE v. FINLEY, Fla., 11 South. Rep. 674.

13. BURGLARY.—Where there are two counts in an indictment for burglary,—one charging the offense to have been committed at night, and the other charging it to have been committed in the day-time,—it is proper for the court, by instruction, to limit the jury to a consideration of the first count, where it appears that the

offense was committed at night.—COATES V. STATE, Tex., 20 S. W. Rep. 585.

14. CARRIERS OF GOODS—Lien for Frieght.—Where an owner of goods ships them from one point to another through the hands of a common carrier, there is no change in the ownership of the goods, and the only interest the carrier acquires in them is a lien for such freights and charges as may be due at the point of destination.—MIAMI POWDER CO. V. PORT ROYAL & W. C. RY. CO., S. Car., 16 S. E. Rep. 339.

15. CARRIERS OF PASSENGERS—Ticket.—If a passenger has not been afforded a reasonable opportunity to purchase a ticket at the station where his journey began, he is not bound to leave the train at a station en route and purchase a ticket back to the station whence he started, and another to his destination. If he is rightly on the train without a ticket, it is his right to complete his intended journey by paying the ticket rate for his fare.—CENTRAL RAILROAD & BANKING CO. V. STRICKLAND, Ga., 16 S. E. Rep. 352.

16. CERTIORARI — Judgment by Default.—Where a trial court, on motion regularly submitted by plaintiff, struck out defendant's answer, and rendered judgment against him as by default, the action of the court, though erroneous, was within its jurisdiction, and a writ of *certiorari* would not lie to annul the judgment.—SHERER V. SUPERIOR COURT, Cal., 31 Pac. Rep. 565.

17. CONSTITUTIONAL LAW — Curtesy — Abolition by Legislature.—The dower act of 1874, which abolished the estate of curtesy, is constitutional as applied to those who, at the time of its passage, had only an estate by the curtesy initiate under the said act of 1861, since a mere expectancy may be taken away by the legislature.—MCNEER V. MCNEER, Ill., 32 N. E. Rep. 681.

18. CONSTITUTIONAL LAW — Municipal Ordinance.—A claim that a municipal ordinance impairs the obligation of a contract will not sustain the jurisdiction of a federal court unless the ordinance is authorized, or supposed to be authorized, by a law of the State.—HAMILTON GASLIGHT & COKE CO. V. CITY OF HAMILTON, U. S. S. C., 13 S. C. Rep. 90.

19. CONSTITUTIONAL LAW — Retrospective Laws—Usury.—Laws Mo. 1891, p. 170, § 2, provides that when the validity of any pledge or mortgage of personal property, to secure indebtedness is drawn in question proof that the party holding the lien has received or exacted usury shall render such lien invalid: Held, that this merely prescribed an additional penalty for an act which was before unlawful and therefore it invalidated a chattel mortgage, made before it went into effect, when usury was received on the indebtedness afterwards, and that such a construction was not giving the statute a retroactive operation.—MACKEY V. HOMLES, U. S. C. C. (Mo.), 52 Fed. Rep. 722.

20. CONSTITUTIONAL LAW—State Inspection Laws.—In the absence of any constitutional prohibition, a State has the right, under the general powers reserved from the grant of other powers to the federal government, and in the regulation of its internal commerce, and to protect its citizens from fraud, to say that certain articles shall not be sold within its limits without inspection, and also to charge the cost of such inspection upon those offering such articles for sale.—PATAPSCO GUANO CO. V. BOARD OF AGRICULTURE OF NORTH CAROLINA, U. S. C. C. (N. Car.), 52 Fed. Rep. 690.

21. CONTRACT.—Where two persons agreed to form a partnership for doing certain work before any contract for doing the work was obtained, and the partnership was never launched, and one of the parties carried on the work alone, the only remedy, of the one excluded is an action at law for breach of contract.—THOMASON V. DE GREAYER, Cal., 31 Pac. Rep. 567.

22. CONTRACT—Husband and Wife—Alimony.—A contract, though for a valuable consideration, between husband and wife, that she will not sue for alimony for a year, is void as against puclic policy.— EVANS V. EVANS, Ky., 20 S. W. Rep. 605.

23. CONTRACT OF EMPLOYMENT—Interest.—Where defendant agrees to pay plaintiff a yearly salary, with no understanding when such salary is to be paid, interest cannot be recovered until payment is demanded.—SOULE V. SOULE, Mass., 32 N. E. Rep. 663.

24. CONTRACT — Part Performance.— Where a water company contracted for work to be done, and afterwards, because of a rise in the river and danger to some of its buildings, it desired to stop the work, it could do so only subject to liability for any injury thereby done to the other party.—VICKSBURG WATER SUPPLY CO. V. GORMAN, Miss., 11 South. Rep. 680.

25. CONTRACT—Services by Child to Parent.— Ordinarily, where one renders in behalf of another valuable services which are accepted by the latter, the law raises in favor of the former an implied promise to pay for the same, although no formal or express contract has been made. Where, however, the parties sustain towards each other the relation of parent and child and the services performed are in the nature of care and attention bestowed by a son upon an old and infirm father, no such presumption arises by operation of law.—HUDSON V. HUDSON, Ga., 16 S. E. Rep. 349.

26. CONTRACT OF SALE—Right to Rescind. — In contracts of merchants for the sale and delivery or for the manufacture and sale of marketable commodities, a statement descriptive of the subject-matter, or some material incident, such as the time of shipment, is a condition precedent, upon the failure or non-performance of which the party aggrieved may repudiate the whole contract.—BECK & PAULI LITHOGRAPHING CO. V. COLORADO MILLING & ELEVATOR CO., U. S. C. C. of App., 52 Fed. Rep. 700.

27. COUNTIES—Negligence—Defective Bridge.—A traveler, with a load which is not unusally heavy, on crossing a bridge has a right to rely on its apparent condition of soundness and safety.—BOARD OF COM'RS OF ALLEN COUNTY V. CREVISTON, Ind., 32 N. E. Rep. 785.

28. COUNTY FUNDING BONDS. — Where authority is given to a county to issue funding bonds, and no limitations as to their form are prescribed (except in respect to the rate of interest and terms of the loan), the power to designate, in the bonds, a place of payment, beyond the limits of the county, is implied.—SKINKER V. BUTTLER COUNTY, Mo., 20 S. W. Rep. 613.

29. CRIMINAL EVIDENCE—Burglary.—In a prosecution for burglary, a pair of drawers alleged to have been stolen at the time of the burglary, and worn by defendant a few days thereafter, when arrested, are admissible in evidence for the purpose of comparing them with another pair purchased by an inmate of the burglarized house at the same time as the stolen pair, both being of a particular make and patent, with certain numbers stamped thereon.—WOODRUFF V. STATE, Tex., 20 S. W. Rep. 573.

30. CRIMINAL LAW—Appeal Bond.— An appeal bond not signed by appellant is fatally defective. — SCARBOROUGH, Tex., 20 S. W. Rep. 584.

31. CRIMINAL LAW—Burden of Proof.—In a prosecution for rape, a charge that, in the evidence of the prosecution satisfied the jury beyond a reasonable doubt that defendant was guilty, then they should examine the evidence for defendant, for the presumption of innocence has been then removed, and the burden is on him to restore the original presumption of innocence, is erroneous, since in criminal trials the burden of proof does not shift, but is on the people during the whole trial.—PEOPLE V. MCWHORTER, Mich., 53 N. W. Rep. 780.

32. CRIMINAL LAW—Homicide— Self-defense.—An instruction on the law of self-defense, that one who is in no apparent danger, who does not apprehend it, and has no grounds for such apprehension, may deliberately and maliciously kill another, and successfully interpose the defense of self-defense, because it subsequently appears that there was actual danger, of which he was at the time ignorant, is a misstatement of law, and was properly refused.—TROGDON V. STATE, Ind., 32 N. E. Rep. 725.

33. CRIMINAL LAW—Insanity.—It is proper to instruct the jury that if defendant, when he committed the act charged, was able to distinguish right from wrong, and to choose whether to do or not to do such act, then he should not be acquitted on the ground of insanity, and that lunacy, in order to take away criminal responsibility, must be such as to obliterate the sense of right and wrong as to the particular act done —HORNISH v. PEOPLE, Ill., 32 N. E. Rep. 677.

34. CRIMINAL LAW—Jurisdiction.—Where a defendant in a criminal prosecution, without objecting to the manner of his arrest or of his being brought before the court pleads to the indictment or complaint, he waives all objection that he is not properly before it for the purpose of being tried, and the court has jurisdiction of the person.—STATE v. FITZGERALD, Minn., 53 N. W. Rep. 799.

35. CRIMINAL LAW—Jury.— Where the jury, having returned, stated they understood the charge, but "could not agree upon the degree," and the judge sent them back, urging them to agree if possible, but disclaiming any desire to coerce them, no error was committed.—DOW v. STATE, Tex., 20 S. W. Rep. 583.

36. CRIMINAL LAW—New Trial.—A party is not entitled to a new trial on the groond of surprise, unless he made application for a postponement of the trial in order that he might repair the damage done him by the unexpected testimony.—OVERTON v. STATE, Ark., 20 S. W. Rep. 590.

37. CRIMINAL LAW — Preliminary Examination. — Where a person is arrested on a complaint and warrant issued by a justice of the peace, charging an assault with intent to do great bodily harm, but waives examination, and is bound over for trial in the circuit court, where he is informed against in two coutns,— one for assault with intent to do great bodily harm, and the other for assault and battery,—to which he pleads not guilty and goes to trial, he will be considered as having waived an examination on the count charging assault and battery.—PEOPLE v. WILLIAMS, Mich., 53 N. W. Rep. 779.

38. CRIMINAL LAW—Remarks of Court.—A conviction for assault will not be reversed because the court in a ruling remarked to defendant's counsel, in the presence of the jury, that he would not "permit a re-examination merely because a witness has made a statement in his direct examination which he has denied on his cross-examination, and in such examination has appeared badly, for the purpose of removing the effect of such appearance," where the court afterwards stated to counsel, also in jury's presence, that he did not intend to characterize the appearance of the witness, but to call attention to the limit of re-examination.— COMMONWEALTH v. WARD, Mass., 32 N. E. Rep. 663.

39. CRIMINAL LAW — Sale of Mortgaged Chattels by Minor.—A minor cannot be held criminally responsible for selling chattels mortgaged by him, since such sale is simply a disaffirmance of the mortgage, which it is his right to make.—JONES v. STATE, Tex., 20 S. W. Rep. 578.

40. CRIMINAL PRACTICE — Burglary. — On the trial of a person indicted for a violation of How. St. § 9175, providing a punishment for having in possession any implement adapted to breaking open any building in order to steal therefrom, knowing the same to be adapted thereto, with intent to use the same, it is not necessary for the State to allege or prove the particular building intended to be broken open, or who is the owner of it.—PEOPLE v. EDWARDS, Mich., 53 N. W. Rep. 778.

41. CRIMINAL PRACTICE — Burglary— Indictment.— A sheriff's office is a "house," within Pen. Code, art. 704, which defines the crime of burglary as being the entry of a "house" by force, etc; and hence an indictment which charges defendant with breaking into the sheriff's office, and also into a vault therein, is sufficient, though it does not use the precise language of the statute, and allege the sheriff's office to be a house.—BIGHAM v. STATE, Tex., 20 S. W. Rep. 577.

42. CRIMINAL TRIAL—Misconduct of Jury.—The fact that after the case was submitted to the jury some of the jurors were allowed to stand on the court house porch, where they could hear citizens discussing the merits of the case, and insisting on defendant's guilt, is ground for setting aside a verdict of guilty, and granting a new trial.—VAUGHAN v. STATE, Ark., 20 S. W. Rep. 588.

43. CURTESY IN LEASEHOLD INTEREST.—The common-law rule that a husband could not have an estate by the curtesy in a leasehold has not been changed by Code, § 51, providing that where the words "real estate," "real property," or "lands" are used in the Code they shall include lands, tenements, and hereditaments, and all rights thereto and interest therein, equitable as well as legal; for, though when these terms are used in enacted statutes under this provision, they necessarily embrace leaseholds, yet the rule cannot be applied to curtesy, since the Code nowhere provides that the husband shall have curtesy in the "land" or "real property" of his wife.—LEWIS v. GLASS, Tenn., 20 S. W. Rep. 571.

44. DEED—Boundaries.—Where a street, as abutting on which a lot was conveyed, had been surveyed and its location designated by stakes set at the corners of the lot when the deed was made, the boundary of the street forms the boundary of the lot, though the measurements given in the deed would include a portion of the street, whether the grantee had actual knowledge of the stakes or not.—FOLEY v. MCCARTHY, Mass., 32 N. E. Rep. 669.

45. DEED—Cancellation.—Where heirs of a decedent sue to set aside for fraud and undue influence a deed which he made shortly before his death, the burden of proof is upon them to establish their charges by a preponderance of evidence.—BROWN v. FOSTER, Mo., 20 S. W. Rep. 611.

46. DEED—Description.— A deed conveying the "P salt works, and the lands contiguous thereto," does not embrace land distant about three-fourths of a mile from the main body of the salt-works land, and separated therefrom by the intervening lands of other persons, since there is nothing in the context of the deed to show that the parties used the word "contiguous" in any other than its primary meaning, which is "in actual contact" or "touching."—HOLSTON SALT & PLASTER CO. v CAMPBELL, Va., 16 S. E. Rep. 274.

47. DEED—Mental Capacity.—In a suit to set aside a deed to the grantor's son it appeared that at the time of its execution the grantor was too old and infirm to attend actively to business, being confined to his house and yard, and frequently sick in bed; that he was often unable to attend to his own physical wants, was childish and fretful; and that the money consideration for the deed was less than half the value of the land. It further appeared that the grantor had conceived the idea of deeding the land, in order to keep it from a creditor; that he had previously announced his intention of making the deed; and that he put the deed in escrow, to be delivered only when the son signed a contract permitting him to use the land during his life: Held, that the grantor was competent to make the deed.—ARGO v. COFFIN, Ill., 32 N. E. Rep. 679.

48. DEED — Purchaser for Value.—Where a deed is made in consideration of the absolute discharge of a pre-existing debt of the grantor to the grantee, or of an adequate portion of it, the grantee is a purchaser for value, and he will be protected against a previous unrecorded deed of the same grantor, of which he had no notice.—STATE BANK OF ST. LOUIS v. FRAME, Mo., 20 S. W. Rep. 620.

49. DEED — Reformation.—In an action to reform a deed on the ground that it conveys more land than was intended, and to recover possession of the land mistakenly included, the deed must be reformed before plaintiff can recover.—POPEJOY v. MILLER, Ind., 32 N. E. Rep. 713.

50. DEED.—In a conveyance of a right of way to defendant railroad company, following the description were the words, "as now staked out by the engineer of said corporation, and partially graded for a railroad, reserving to ourselves the right of a passageway over said railroad, which passageway is to be constructed and kept in repair by ourselves." The location of the railroad was not filed until after the conveyance: Held, that the conveyance constituted a reservation in the grantors only of a right of passage over the land conveyed, rather than an exception of such right from the grant which would pass to the grantor's successors.—CLAFLIN V. BOSTON & A. R. CO., Mass., 32 N. E. Rep. 659.

51. DEED—Right of Way.—Where a person conveys a part of his land by a deed, "reserving from said grant the perpetual right of way for a private way through on the south side of said lot," the right of way thus reserved is appurtenant to that portion of the land retained by the grantor, the word "heirs" not being necessary in such a reservation to create an easement running with the land.—LATHROP V. ELSNER, Mich., 53 N. W. Rep. 791.

52. DEED—Undue Influence.—Evidence that a grantor, at the time he executed a conveyance to his daughter, was advanced in years and had feeble health and impaired eyesight, and that his mind was not as vigorous as it had been, is not sufficient to justify a finding that he was of unsound mind, where a large number of his neighbors testify that he was capable of transacting ordinary business.—PEABODY V. KENDALL, Ill., 32 N. E. Rep. 674.

53. DRAINAGE DISTRICTS—Annexation.—Rev. St. 1891, ch. 42, § 117, declares that owners of land outside a drainage district, who connect their ditches with those of the district, shall be deemed to have applied to be included in the district, and that their lands benefited thereby shall be treated, classified, and taxed as other lands in the district: Held, that the fact that a drainage district lies wholly within one township, and the highway commissioners are *ex officio* the drainage commissioners, does not prevent them from taxing for drainage purposes land in another township, which has been by its owners connected with the drains of said district, since in levying such taxes the commissioners act as officers, not of the township, but of the drainage district.—PEOPLE V. DORNBLAZER, Ill., 32 N. E. Rep. 688.

54. ELECTION—Contest.—In a proceeding to contest an election, it is competent for witnesses to testify that they were under 21 years of age at the time of voting, and that their votes were cast for the candidate receiving the largest number, to whom a certificate of election has been granted.—CRABB V. ORTH, Ind., 32 N. E. Rep. 711.

55. EQUITY JURISDICTION—Construction of Will.—Suit cannot be brought in equity, by divisees in possession of land under a will, to remove from the title a pretended cloud, arising out of a claim made by other divisees to a contingent interest under the will, and which, being based upon, necessitates a construction of, the will, even though there be sufficient plausibility about the claim to deter purchasers; but the only remedy is through an action at law.—MILES V. STRONG, Conn., 25 Atl. Rep. 459.

§ 56. EVIDENCE—Probate Records.—A probate record is competent evidence to show an order by the probate court for the specific performance by an executor of a contract made by a testator for the conveyance of land, and it is immaterial that such record contains no caption naming the parties, and reciting neither the filing of a petition nor notice to the executors.—WILLIAMS V. MITCHELL, Mo., 20 S. W. Rep. 647.

57. EXECUTION—Exemptions—Powers of Sheriff.—The sheriff has no power to pass on the sufficiency of an exemption claim, and can disregard no claim unless interposed by a defendant in an execution on a judgment based on tort or other demand, against which the statute does not authorize a claim of exemption to be made.—KENNEDY V. SMITH, Ala., 11 South. Rep. 665.

58. EXECUTION SALE—Collateral Attack.—Though by statute the sheriff is required to divide land to be sold under execution, when it is susceptible of division, and to sell only so much as is sufficient to satisfy the execution, yet, if he does not comply with the statute, the sale is not void, and cannot be questioned in a collateral proceeding.—LEWIS V. WHITTEN, Mo., 20 S. W. Rep. 617.

59. FEDERAL COURTS — Jurisdiction— Railroad Foreclosure.—A federal court having jurisdiction and possession, through its receiver, of all the property of a railroad company, thereby acquires jurisdiction of a subsequent suit to foreclose a mortgage on the same property, irrespective of the citizenship of the parties thereto, and may enter therein a binding decree of foreclosure and sale.—CAREY V. HOUSTON & T. C. RY. CO., U. S. C. C. (Tex.), 52 Fed. Rep. 671.

60. FORCIBLE ENTRY AND DETAINER.—Where plaintiff, a merchant, seeks to show his rights to possession in an action of forcible entry and unlawful detainer, through a conveyance made by a trustee in a trust deed executed by defendant to secure a debt due by defendant to plaintiff, and contracted in the course of dealing between them as merchant and customer, defendant may defend by showing that plaintiff has not paid his privilege tax, and therefore, under Rev. Code, § 589, is not able to enforce any contract made in reference to his business.—WILLIAMS V. SIMPSON, Miss., 11 South. Rep. 689.

61. FRAUDS, STATUTE OF.—A person sold land, representing it to have a certain frontage. The buyer paid for the land, but, finding it to have a less frontage, refused to accept a deed. The seller then agreed, if he would accept the deed, to repay the difference in value between the actual land and the land as represented: Held, not an agreement for the sale of land, or of an interest in or concerning it, necessary to be in writing.—HAVILAND V. SAMMIS, Conn., 25 Atl. Rep. 394.

62. FRAUDS, STATUTE OF.—Where subcontractors, on account of impending insolvency of the contractor, entirely abandon their contract with him, and the work specified therein, after it is partly performed, and afterwards contract with the owner to complete the abandoned work for a gross sum, which includes the value of the work done for the contractor, the latter contract is not within the statute of frauds as an agreement to answer for the debt of another, when it appears that the contractor also abandoned his contract with the owner, and made a subsequent contract, which did not include the work formerly let to the subcontractors.—BUCHANAN V. MORAN, Conn., 25 Atl. Rep. 396.

63. FRAUDS, STATUTE OF—Sale of Land.—In the absence of fraud on the part of the vendor, a purchaser of land who has paid a part of the purchase pri e, even though he has neither signed a memorandum of the contract of sale nor been put into possession of the land purchased, cannot recover back the money so paid if the vendor has signed a memorandum of the contract of sale sufficient to bind him (the vendor) to a performance thereof, and is able to perform it.—NELSON V. SHELBY MANUF'G & IMP. CO., Ala., 11 South. Rep. 695.

64. FRAUDULENT CONVEYANCES.—A fraudulent conveyance of his property to a debtor, after securing credit for goods purchased, does not avoid the contract so as to entitle the creditor to recover before the debt becomes due.—ENGLAND V. ADAMS, Mass., 32 N. E. Rep. 665.

65. FRAUDULENT CONVEYANCES.—A sale, though made by the vendor with a fraudulent intent, is not void unless the vendee had actual notice and knowledge of such intent; the mere knowledge of facts which if investigated would lead to knowledge of the fraud not being sufficient.—STATE V. MASON, Mo., 20 S. W. Rep. 629.

66. HIGHWAYS—Road Districts—Towns.—A township order issued by the township board to take up orders issued by the highway commissioner, which were drawn upon and chargeable to road districts in the

township, is not a township debt, under How. St. §§ 1325-1327, 1443, providing for the maintenance of highways by the several road districts, and the collection of assessments from such districts for the expenses connected therewith.—MCFARLAN V. TOWNSHIP OF CEDAR CREEK, Mich., 53 N. W. Rep.

67. HOMESTEAD.—A husband died, having no children, but leaving a widow, who brought suit against his brothers and sisters for dower and homestead. She then married, and rented out the homestead, and resided with her husband at another place: Held that, under Laws, 1875, p. 60, providing that "homestead shall pass to and vest in such widow and children until the youngest child shall attain its legal majority, and until the death of such widow," the widow had a life estate in the property, which was not divested by her subsequent marriage, and she could rent it out as she pleased during life.—WEST V. MCMULLEN, Mo., 20 S. W. Rep. 628.

68. HUSBAND AND WIFE—Marriage Settlement.—An antenuptial contract provided that in lieu of dower the wife should receive from the husband at the time of marriage "securities amounting in the aggregate to $50,-250," naming certain securities. These securities were given to the wife as agreed, but subsequently turned out to be worth much less than their face value of $50,-250: Held that, as there was no fraud or misrepresentation, the wife could not recover from her husband's estate the difference between their real and nominal value.—CARR V. LACKLAND, Mo., 20 S. W. Rep. 624.

69. INSOLVENCY—Jurisdiction.—The court of commissioners of Alabama claims gave judgment for a person who had previously been declared an insolvent debtor under the Massachusetts law. A draft in satisfaction of the judgment, payable to the debtor's order, who received in Boston by his attorney. A few days thereafter the debtor died intestate, and the attorney received payment of the draft, acting under power of attorney from the widow, who took out letters of administration in the District of Columbia, all the parties were citizens of Massachusetts: Held, that the debtor's claim and its proceeds were within the jurisdiction of Massachusetts, and the right to them there vested in the assignee in insolvency before the debtor's death.—BUTLER V. GORELEY, U. S. S. C., 13 S. C. Rep. 84.

70. INSOLVENCY — Recovery of Property.—Pub. St. ch. 157, §§ 51, 74, 75, giving an assignee in insolvency the same right to recover the assigned estate as the debtor would have had, and providing as a remedy that, if the latter fails to do what is necessary to such recovery, he may be imprisoned, and cannot obtain his discharge, do not allow an action of contract to be brought by the assignee against the debtor for assets which have not been turned over, or any other remedy than that mentioned—FLAGG V. REED, Mass., 32 N. E. Rep. 665.

71. INSURANCE.—Where a parol contract of insurance was made by an agent authorized to take risks, it need not be shown affirmatively that he had authority to contract by parol.—STICKLEY V. MOBILE INS. CO., S. Car., 16 S. E. Rep. 280.

72. JUDGMENT — Satisfaction.—M held at judgmen against G, which he agreed to release if G, would deliver him a deed to certain property, which he did. Prior to such agreement, G had made an assignment of all his property for the benefit of his creditors. M knew that G had made an assignment, but denied knowing that it included the specified property. G made no attempt to conceal any fact: Held, that an order directing the entry of satisfaction of the judg ment was proper.—MUSSER V. GRAY, Cal., 31 Pac. Rep. 568.

73. LANDLORD — Negligence.—Defendant leased the upper part of his building to a lodge of Odd Fellows. On the sidewalk, at the ordinary approach to the lodge room, defendant's servant left a barrel, over which plaintiff, a member of the lodge, fell on his way from lodge on a dark night: Held, that plaintiff was entitled to recover for his injuries, on proof that the barrel was so negligently placed as to render the sidewalk unsafe.—BRUNKER V. CUMMINS, Ind., 32 N. E. Rep. 732.

74. LIFE INSURANCE — Premium.—A life insurance policy contained a provision that "if a note, taken for the premium or renewal premium, or any part thereof, on this policy, shall not be fully paid when due, the premium shall be considered as fully earned, and the policy no longer be in force or binding upon the company." G gave his note for the premium, which he failed to pay when it became due: Held, that the company was released thereby.—IMPERIAL LIFE INS. CO. V. GLASS, Ala., 11 South. Rep. 671.

75. LIMITATION OF ACTIONS—Running of Statute.—Defendants contracted to haul the steamer Butte, owned by plaintiff, out of a river, on marine ways operated by them, and made a similar contract with the owners of the steamer McLeod. By reason of defendant's negligence in improperly blocking the ways, the Butte slipped back into the river, and collided with the McLeod, which sank. The owners of the McLeod libeled the Butte, and recovered damages: Held, that the right of plaintiff to sue defendants for indemnity for the money which he was compelled to pay did not accrue, nor did the statute of limitations begin to run, until the payment was made.—POWER V. MUNGER, U. S. C. C. of App., 52 Fed. Rep. 705.

76. MARRIAGE—Proceeding to Annul.—Where a man marries a woman whom he has debauched before marriage, and whom he knew to be pregnant at the time of marriage, he cannot have the marriage annulled on the ground that he was deceived by the false assurances of the wife that he was the father of the child, and that she had been chaste to all others, under Civil Code, § 82, providing for annulling marriages where the consent of either party was obtained by fraud.—FRANKE V. FRANKE, Cal., 31 Pac. Rep. 571.

77. MECHANICS' LIENS.—In an action to enforce a mechanic's lien it appeared that, after performing most of the work he had contracted to do, the complainant quit work, claiming the defendant prevented him from going on with the work, though defendant contended it was because he had accepted certain orders which displeased complainant. The court found that complainant was entitled to the difference between the unpaid amount of contract and extra work and the amount defendant had paid to finish the work, added to the amount defendant had paid to complainant's material-men, and gave him a lien for that amount: Held, that the judgment would not be disturbed.—LANDYSKOWSKI V. MARTYN, Mich., 53 N. W. Rep. 781.

78. MORTGAGE — Foreclosure.—Where a mortgagor, whose property has been foreclosed, pending redemption, quitclaims the land to one S by a deed which was not delivered because of failure of S to perform, and then quitclaim to B, the latter has the right to redeem from such foreclosure.—DODGE V. KENNEDY, Mich., 53 N. W. Rep. 785.

79. MORTGAGE — Purchase by Senior Mortgagee.—Where there are two unrecorded incumbrances, the purchase of the equity of redemption by the holder of the senior security does not, of itself, let in the junior mortgage to a precedence over the former, under the registry laws of Missouri.—WILSON V. VANSTONE, Mo., 20 S. W. Rep. 612.

80. MUNICIPAL CORPORATIONS — Fire Department.—Const. art. 11, § 11, which provides that "any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws," does not authorize the board of supervisors of the city and county of San Francisco, by ordinance, to reorganize and regulate the fire department of that municipality, since Act March 28, 1878 (charter of the city and county), provides for the organization and administration of such department as a branch of the municipal government, and cannot be abrogated by such ordinance.—PEOPLE V. NEWMAN, Cal., 31 Pac. Rep. 564.

81. MUNICIPAL CORPORATIONS — Streets — Assessment of Benefits.—The board of public works, in apportioning the benefits to the respective lots for grading a street, adopted and acted on an arbitrary rule, taking into account only the proximity of the lots to the street, without regard to their situation in other respects, or to how they might be affected by the grade: Held, that the assessment was void.—STATE v. JUDGES OF DISTRICT COURT OF ELEVENTH JUDICIAL DISTRICT, Minn., 53 N. W. Rep. 800.

82. NATIONAL BANKS—Negotiable Instruments.—Notes given in renewal of other notes held by a national bank, the original notes not being returned to the maker, are not "evidence of debt," or "assets," within Rev. St. U. S. § 5242, declaring void all transfers of "evidences of debt" owing to any national bank made after insolvency or in contemplation thereof to prevent the application of the assets to the bank, as required by law, or with a view to prefer creditors.—FIRST NAT. BANK OF DECATUR v. JOHNSTON, Ala., 11 South. Rep. 690.

83. NEGLIGENCE—Pleading.—In an action for damages for injuries sustained through defendant railroad company's negligence while unloading a shipment of lumber on one of defendant's cars, plaintiff alleged that the car was side tracked in the usual place for unloading provided by defendant, and that plaintiff was unloading the car at the request of the lumber company which made the shipment, and while he was so engaged on the car the injury was sustained: Held, that the allegation was sufficient to show that plaintiff was lawfully on the car at the time of the injury.—CHICAGO & I. COAL RY. CO. v. MCDANIELS, Ind., 32 N. E. Rep. 728.

84. NEGOTIABLE INSTRUMENT — Indorser.—Defendant W indorsed a note to L, the indorsement stating that it was "with recourse." W, in an action against him on the note, introduced evidence that the agreement and intention of both parties was that the indorsement should be "without recourse." The jury so found, and also that plaintiff, before he purchased the note of L, had notice that it was the understanding both of W and L that the note was transferred to L without any recourse against W: Held, that plaintiff, not being a *bona fide* holder of the note, though he purchased it before maturity for value, could not recover from W on his indorsement.—JOHNSON v. WILLARD, Wis., 53 N. W. Rep. 776.

85. NEGOTIABLE INSTRUMENT—Trial without Jury.—The holder of a promissory note, which bears interest, by its terms, from maturity, cannot claim that he is entitled as a matter of absolute right to a trial without a jury, where, in suing the maker on the note, he claims interest from its date under an allegation of error, and where, averring that payment of the note is secured by a privilege, he seeks to have that privilege recognized and enforced through pleadings which disclose the fact that the existence of the privilege is a matter still *in pais*, requiring to be established by parol evidence.—STATE v. JUDGE OF TWENTY-SECOND JUDICIAL DIST. CT., La., 11 South. Rep. 684.

86. NOTARY PUBLIC—Constitutional Law.—The office of a notary public is a civil office of profit, under this State within the meaning of section 9 of article 4 of the constitution of Nevada.—STATE v. CLARK, Nev., 31 Pac. Rep. 545.

87. PARTITION—Tenants in Common.—The conveyance by one tenant in common of particular parts of the estate does not affect the right of the other tenants to partition, since such conveyance is void as to them.—BARNES v. BOARDMAN, Mass., 32 N. E. Rep. 670.

88. PARTNERSHIP—Conversion.—Where a partner collects money which on settlement of partnership affairs he has agreed shall be collected by his copartner as his individual property, and after collection converts it to his own use, the partner to whom the money belonged may maintain an action for its recovery without a prior demand.—DOUTHIT v. DOUTHIT, Ind., 32 N. E. Rep. 715.

89. PARTNERSHIP—Notice of Retirement.—Where one retires from a firm, knowing the previous relations of the firm with persons in another city, and that renewal notes are to be issued to such persons in lieu of others held by them, notice of the retirement, published merely in the newspapers at the firm's place of residence, is not sufficient, unless the notice is in fact seen by such creditors, or knowledge comes to them in some other manner.—SIBLEY v. PARSONS, Mich., 53 N. W. Rep. 786.

90. PARTNERSHIP—Preference.—A party was admitted as a new member of a firm, but the business was continued without change, and no inventory of stock was taken. The assets and liabilities of the old firm were tacitly understood to be those of the new. The new member brought no capital into the firm, was ignorant of its financial standing, and made no inquiries. The new firm rendered statements of accounts annually to certain creditors, whose claim was preferred in an assignment for the benefit of creditors afterwards made by it, and the new member joined in the assignment: Held, that the preferred debt had become the debt of the assigning firm, and the preference was valid.—PEYSER v. MYERS, N. Y., 32 N. E. Rep. 699.

91. PATENTS FOR INVENTIONS—Statutes of Limitation.—The weight of judicial opinion being that State statutes of limitation are not applicable to actions in federal courts for infringements of patents, a circuit court of the United States, although of the contrary opinion, in the absence of any authoritative decision of the question by any appellate court, will sustain a demurrer to a plea of such statute in an action on the case for infringement of a patent, where part of plaintiff's claim is within the saving clause of Act Cong. June 18, 1874, repealing the previous limitation of such actions, and where there must be a trial in any event, and the question may be considered on appeal.—BRICKILL v. THE CITY OF BALTIMORE, U. S. C. C. (Md.), 52 Fed. Rep. 737.

92. PHYSICIAN AND SURGEON—Claims.—A party cannot recover for services rendered as physician and surgeon unless he has a certificate to practice medicine and surgery, as required by statute.—ROBERTS v. LEVY, Cal., 31 Pac. Rep. 570.

93. PROCESS—Service of Summons.—Under How. St. § 6827, providing that the summons shall be served "at least six days before the time of appearance mentioned therein," a summons returnable on the 18th day of the month is properly served on the 12th day of the same month, since the rule is that, where an act is to be done a certain number of days before another act, then the day on which that act is done is to be included.—CHADDOCK v. BARRY, Mich., 53 N. W. Rep. 785.

94. PROCESS—Summons—Service.—Under Code, § 893, which requires the coroner to execute process whenever the sheriff is disqualified, and section 895, which authorizes a constable to act when the coroner is disqualified, process directed to a sheriff, in an action wherein he is a party, cannot lawfully be served by a constable, unless the office of coroner is vacant, or unless the incumbent of such office is under some disability which prevents him from acting.—ANDREWS v. FITZPATRICK, Va., 16 S. W. Rep. 278.

95. PUBLIC LANDS—Railroad Right of Way.—The act of March 3, 1875, among other things grants a right of way over public lands to any "duly-organized" railroad company which shall have filed with the secretary of the interior a copy of its articles of incorporation and "due proof" of its organization: Held, that the "due organization," and the furnishing of "due proof" thereof, are conditions precedent to the acquirement of any right to such right of way.—WASHINGTON & I. R. CO. v. COEUR D'ALENE RY. & NAV. CO., U. S. C. C. (Idaho), 52 Fed. Rep. 765.

96. QUIETING TITLE—Pleading and Proof.—Evidence of fraud on the part of an administratrix in procuring the purchase of property for herself at probate sale is inadmissible, under the usual pleadings, in an action for quieting title, to overthrow the title acquired at such sale, when the fraud, or the facts constituting the

fraud, have not been pleaded.—BURRIS v. ADAMS, Cal., 31 Pac. Rep. 565.

97. RAILROAD COMPANIES—Fires—Evidence.—In an action against a railroad company for the negligent burning of buildings situated near its tracks, where the only issue was as to the origin of the fire, evidence that, on different occasions within some weeks prior to the loss, fire had escaped from engines of the company in the immediate vicinity of the property, was admissible as tending to prove the possibility, and the consequent probability, that some engine caused the fire.—CHICAGO, ST. P. M. & O. RY. CO. v. GILBERT, U. S. C. C. of App., 52 Fed. Rep. 711.

98. RAILROAD COMPANIES—Foreclosure of Mortgage.—Legal services rendered to a railroad company in maintaining before the courts the validity of municipal aid bonds are not of a character to take precedence of the company's mortgage bonds, within the doctrine of Fosdick v. Schall, 99 U. S. 235, and equity has no authority to give them such precedence, especially when the services were rendered two years before the appointment of the receiver.—FINANCE CO. OF PENNSYLVANIA v. CHARLESTON, C. & C. R. CO., U. S. C. C. (S. Car.), 52 Fed. Rep. 678.

99. RAILROAD COMPANIES—Injury— Negligence.—It is not negligence *per se* in a railway company to receive from other companies, and haul over its own track, cars having different styles of coupling from those in use on its own cars, and which increase the hazard of coupling.—LOUISVILLE & N. R. CO. v. BOLAND, Ala., 11 South. Rep. 667.

100. RAILROAD COMPANIES—Negligence.—In an action for the death of plaintiff's son, a boy 10 years old, it appeared that while on the street unattended he was run over by defendant's street car, which was drawn by mules. The boy knew the street well; it was daylight; the mules were moving at a walk, and he could have seen the car if he had looked: Held, that it was error to charge that the deceased had a right to presume that defendant had complied with the law as to providing bells for the mules in the absence of knowledge to the contrary as it was a question for the jury whether, if he had exercised due care, deceased would not have observed the absence of bells.—LYNCH v. METROPOLITAN ST. RY. CO., Mo., 20 S. W. Rep. 642.

101. RAILROAD COMPANIES — State Regulation.— Sections 1, 10, and 11 of the act of the legislature (Laws Mo. 1887, p. 15, Ex. Sess.), standing alone, would seem to entitle the shipper to recover triple damages from the common carrier for exacting unreasonable and unjust freight charges, whenever a jury might deem the rate unreasonable or unjust; but looking at the whole act, in connection with antecedent legislation, *in parti materia*, it is held that the triple liability does not arise where the carrier has not charged a rate in excess of the maximum rate established by the railroad commissioners, or the maximum rate permitted by the statute in the absence of any action thereon by the commissioners.—WINSOR COAL CO. v. CHICAGO & A. R. CO., U. S. C. C. (Mo.), 52 Fed. Rep. 716.

102. RAILROAD CONTRACT — Construction.—In an action against a railroad company for work performed under a contract stipulating that it shall be executed under the direction of the company's engineer, by whose admeasurements the amount of work performed shall be determined, and whose determination shall be conclusive, the stipulation was binding since it was a part of the consideration of the contract.—WILLIAMS v. CHICAGO, F. & C. RY. CO., Mo., 20 S. W. Rep. 631.

103. REMOVAL OF CAUSES — Special Appearance.—A nonresident defendant who files in the State court a special appearance, for the purpose of objecting to the jurisdiction, and subsequently removes the cause to a federal court, expressly disclaiming in his petition for removal any purpose to enter a general appearance, does not by such removal waive the jurisdictional question, but may remove the same, and have it determined by the federal court.—MCGILLIN v. CLAFLIN, U. S. C. C. (Ohio), 52 Fed. Rep. 657.

104. REPLEVIN BOND—Amendment.— A replevin suit will be dismissed on motion of defendant where the bond taken by the sheriff, which, under Pub. St. ch. 235, § 3, must bind plaintiff "to pay such damages and costs as the defendant shall recover against him," omits the word "damages," the right of amendment provided by section 4 of the same statute being applicable only in favor of defendant, and on his motion.—SIMPSON v. WILCOX, R. I., 25 Atl. Rep. 391.

105. SALE—Refusal to Accept—Damages.—Where the vendee of cattle to be delivered refuses to accept them under his contract, and the vendor resells them in open market, his measure of damages against the vendee for breach of contract is the contract price less the amount realized from the sale in excess of the necessary and proper expenses of sale and keep, and the vendor must show the amount so realized.—SLAUGHTER v. MARLOW, Ariz., 31 Pac. Rep. 547.

106. SCHOOL AND SCHOOL DISTRICTS.—Rev. St. 1891, ch. 122, art. 3, §§ 47, 48, provide that township school trustees may change the school district only on petition of the voters therein; and article 6, §§ 15, 16, *Id.*, provide that any city or district whose schools are managed under any special act may reorganize under the general school law, in which case the "trustees shall proceed to redistrict the township or townships in such manner as shall suit the wishes and convenience of a majority of the inhabitants:" Held, that a petition of the voters was not necessary to empower the trustees of a township which had so reorganized to redistrict the township.—PEOPLE v. RICKER, Ill., 32 N. E. Rep. 671.

107. SPECIFIC PERFORMANCE—Insolvency of Bank.—Plaintiff made an oral contract with a bank for the purchase of land, and entered and took possession with the bank's knowledge and consent. The bank authorized its cashier to execute and deliver a conveyance on which plaintiff was to pay the purchase price. To meet this payment plaintiff accumulated, with the bank's knowledge, his credits at the bank. The delivery of the deed was delayed through no fault of plaintiff. Subsequently the bank failed: Held, in an action against the receiver to compel specific performance by delivery of the deed, plaintiff's claims against the bank should be allowed in full as a credit on the purchase price of the land.—HUGHITT v. HAYES, N. Y., 32 N. E. Rep. 706.

108. TAXATION — Assessment. — Complainant owned three farms, of which two, and the greater part of the third, were in one county, and the residue of the third in a second county. Complainant resided in a house on that part of the third farm lying in the second county. During the winter his cattle were fed on the two farms first mentioned, but were moved upon the third farm before the 1st of May, and were pastured mostly on that part of the farm lying in the first county: Held, that under Rev. St. 1891, ch. 120, § 7, which provides that personal property shall be listed and taxed in the county where the owner resides, said cattle were properly assessed for taxation in the second county.—RODGERS v. CALDWELL, Ill., 32 N. E. Rep. 691.

109. TAXATION—Corporate Franchises.— The assessment of the value of a franchise measured chiefly by the earning capacity of the corporation is a proper assessment.—CRESCENT CITY R. CO. v. CITY OF NEW ORLEANS, La., 11 South. Rep. 681.

110. TOWNS—Dogs—Sheep Killed.—Gen. St. § 3752, declaring that any one damaged in the killing of sheep by dogs may give information thereof to the selectmen of the town in which the damage was done, that the selectmen shall estimate such damage, and all damage proved to their satisfaction shall be paid by the town, renders binding any such estimate, and does not allow, in the absence of fraud or mistake, any recovery in excess.—VAN HOOSEAR v. TOWN OF WILTON, Conn., 25 Atl. Rep. 457.

111. TRIAL—Attorney — Argument. — Where plaintiff sued a town for injuries received by reason of a hole in a sidewalk, and her attorney, in argument over the ob-

jections of defendant, referred to injuries received at the same time by another than plaintiff, and referred to plaintiff's condition in life, none of which was in evidence, and also stated how the jury stood on the former trial of the case, a new trial should be granted. —EVANS V. TOWN OF TRENTON, Mo., 20 S. W. Rep. 614.

112. TRIAL—Discharge of Juror.—Code 1887, § 3156, provides that no irregularity in drawing, summoning, returning, or impaneling of jurors shall be sufficient to set aside a verdict, unless the party objecting was injured by such irregularity. Section 3152 gives the court authority to discharge persons summoned as jurors: Held, that there was no such irregularity for a judge in a trial court, in the exercise of his discretion, and for cause shown, to reject a man drawn as a juror.—BURCH V. HYLTON, Va., 16 S. E. Rep. 342.

113. TRIAL—Disqualification.—A juror swore that he had formed an opinion, but it was based upon conversations had with persons who knew nothing about any of the facts in the case. The conversations were general current talk. Notwithstanding his opinion, based, as it was, he could and would sit as a juror in the case, unprejudiced and unbiased, and render a verdict according to law and evidence: Held, the trial court committed no error in permitting the juror to sit on the panel.—HAUGEN V. CHICAGO, M. & St. P. RY. Co., S. Dak., 53 N. W. Rep. 769.

114. TRUST—Conveyance to Wife.—Where a husband conveys land to a trustee for the sole and separate use of his wife, and the deed contains no suggestion of a trust in his favor, or power of revocation, parol evidence that the wife declared such property to belong to her husband, and that she would reconvey it to him whenever he asked her to do so, is insufficient to establish a trust in such property in his favor.—PRICE V. KANE, Mo., 20 S. W. Rep. 609.

115. VENDORS AND PURCHASERS — Bona Fide Purchaser.—Though land purchased in his own name by G, plaintiff's father, was paid for with money belonging to their mother, and as against G a resulting trust in their favor was thereby created, where G, while in possession under such purchase, conveyed the land in trust for the payment of his debt, a *bona fide* purchaser under such trust will hold the land as against plaintiffs.—ATKINSON V. GREAVES, Miss., 11 South. Rep. 688.

116. WATERS — Riparian Rights. — A riparian owner may extend his wharves and channels beyond low-water mark, since he has the right to connect his lands by such means with navigable waters, provided he does not interfere with the free navigation thereof.—PRIOR V. SWARTZ, Conn., 25 Atl. Rep. 398.

117. WILLS — Bequests. — Any words which clearly manifest an intention on the part of the testator to give a particular thing constituting a part of his property, as distinguished from all other things of the same kind, and which it appears he did not use to designate quantity, will make the gift specific.—MOORE'S EX'R V. MOORE, N. J., 25 Atl. Rep. 403.

118. WILLS—Contest. — Since Civil Code, § 1292, provides that a written will can only be revoked by a writing or by its destruction, a contest interposed to a petition for the probate of a will, which alleged that the property therein disposed of was, after the execution of the will, conveyed to contestant, presents no ground for contest, where it does not also allege that such conveyance declared the will revoked. — IN RE TILLMAN'S ESTATE, Cal., 31 Pac. Rep. 563.

119. WILL—Construction.—A will devised property to the wife for her life, for the joint benefit of herself and testator's six children, with power in her to give title to any child at such time as she should think fit, but no child was to have more than one-sixth of the entire estate, and at the wife's death each was to have one-sixth of the estate: Held, that the wife had a life estate, with remainder to the children, and was not a tenant with the children, and the children are not entitled to the rents during her life.—JONES V. JONES, Ky., 20 S. W. Rep. 604.

120. WILL — Devise of Power. — A testator, having made a contract of sale of part of his land, died before delivery of the deed. By his will, executed prior to the contract, he gave all his property to his executors upon a trust to receive the profits thereof, to sell and convey as they might deem best, and "to apply the said estate, together with the proceeds of any portion sold, according to the provisions of this will." He then gave to his two daughters, who were also his executrices, his household furniture, and to "each two seventh parts of all my said estate and property;" to them also he gave equal seventh parts as trustees for persons named: Held, that the executrices were given a power in trust coupled with an interest, and a deed by them to the purchaser under the contract passed to him the legal title.—HOLLY V. HIRSCH, N. Y., 32 N. E. Rep. 709.

121. WILL—Education of Children.— Testatrix, after leaving a sum of money to each of her two children, a son and a daughter, divided the estate equally between the children and the husband. In case of the death of the husband before the children's majority, his share was to go to the children. The son was to receive his share at the age of 25, and the daughter at 20, if she married; the children's education "to be paid for out of the interests of my estate:" Held, that the charge for education was upon the whole estate, and that, even conceding the legacies to be vested legacies, distribution could not be had until the charge was satisfied.—IN RE BERTON'S ESTATE, Cal., 31 Pac. Rep. 576.

122. WILL—Estate Conveyed.—A testator devised land to his daughter, subject to the limitation that, if she should die childless, or if her surviving child or children should die childless, the land should revert to the testator's other children: Held, that the intent of testator was to give the daughter a fee subject to defeasance, but the conditional limitation over being void, as it might not take effect within a life or lives in being and 21 years thereafter, the daughter took an absolute fee.—POST V. ROHRBACH, Ill., 32 N. E. Rep. 687.

123. WILLS—Estate in Fee Simple.—Testator gave to his wife and "her heirs forever" a certain part of his estate, with the proviso that whatever of the same, if any, should be left by her, not used for her support, should go to a certain church: Held, that the gift to the wife was, notwithstanding the proviso, a gift in fee, and that the limitation over, therefore, to the church was void.—TRUSTEES OF CENTRAL METHODIST EPISCOPAL CHURCH V. HARRIS, Conn., 25 Atl. Rep. 456.

124. WILL—Subscription by Mark.—Under Civil Code, § 14, defining certain terms, and providing that "'subscription' includes 'mark,' when the person cannot write," where testatrix knew how to write, but was physically too weak to do so, a subscription of her will by mark is sufficient.—IN RE GUILFOYLE'S WILL, Cal., 31 Pac. Rep. 553.

125. WITNESS — Transactions with Decedent.—Where defendant administratrix has been interrogated by plaintiff heirs as to matters equally within the knowledge of the decedent, the inhibition of How. St. § 7545, providing that in a suit by the heirs the opposite party shall not be permitted to testify in his own behalf as to such matters, is waived, and witness may testify in explanation of the matters drawn out by such interrogation.—DUNLAP V. DUNLAP, Mich., 53 N. W. Rep. 788.

ABSTRACTS OF DECISIONS OF MISSOURI COURTS OF APPEAL.

ST. LOUIS COURT OF APPEALS.

COMPOUNDING FELONY—§ 3681, R. S. 1889.—In an action upon a promissory note, where the defense is that the consideration of the note was an agreement to compound a felony, held that, plaintiff could not recover if the evidence established an implied agreement that there would be no prosecution if the note was given. Reversed.—JANIS V. ROENTGEN.

EQUITY—Corporation—Shares of Stock.—In a suit in equity to compel the defendant corporation, either to issue to plaintiff new certificates or pay him the value thereof, held that, as the controversy was not between creditors of the corporation and the plaintiff, but between the corporation and one of its shareholders, the question whether these shares were issued for full value is entitled to no consideration. It appearing that they were issued for some value, defendant's assignment of error that there is no equity in plaintiff's claim, as neither he nor his assignor ever paid to the corporation any value for them must be overruled. Decree modified and judgment for plaintiff.—ROLL V. ST. LOUIS & COLORADO SMELTING CO.

EVIDENCE—Damages—Common Carrier.—In an action to recover damages against a railway for the killing of cattle, which were attracted by salt stored upon defendant's right of way, held that, although the agent of the defendant in storing the salt was not conducting defendant's business but his own, the defendant is not thereby relieved but it is its legal duty so to police its right of way as to prevent and remove all attractive dangers placed on its tracks or right of way by its servants or others. Reversed and certified to supreme court as contrary to the decision of the Kansas City Ct. of Appeals in Gilliland v. Rwy. 19 Mo. App. 411.—BURGER V. RY.

EQUITY—Reformation of Contract of Insurance—Mistake.—In a suit in equity wherein plaintiff seeks to recover upon an insurance policy, held that, although soliciting agent of the company, either through mistake or fraud, filled out plaintiff's application as to several material facts different from what plaintiff stated to him, plaintiff being unable to read and write, plaintiff accepting the policy issued and never examining it until loss had taken place, which occurred fourteen months after policy was issued, and his failing to inform himself seasonably whether or not the provisions of the contract as executed and delivered to him complied with the original understanding, constituted an acceptance of the substituted policy and plaintiff is not entitled to recover. Reversed.—MCHONEY V. GERMAN INS. CO.

EQUITY—Rescission of Contract—Fraudulent Representations.—In a suit in equity whereby plaintiff, the vendee, seeks to rescind a sale where the right of rescission is predicted upon fraudulent representations made by defendant to plaintiff, whereby plaintiff was induced to become the purchaser: Held, that though the misrepresentation of defendant was such a material misrepresentation of an existing fact as entitled plaintiff to a rescission, yet plaintiff is precluded from maintaining a suit in equity for a rescission by reason of not disaffirming promptly and demanding a rescission as soon as he ascertains the falsity of the representation. Plaintiff's remedy is an action at law for damages for the deceit. Affirmed.—BROCKHAUS V. SHILLING.

EVIDENCE — Fraud — Conspiracy.—In an action by plaintiff to recover money due for services rendered to defendant in bringing about a sale of property between defendant and a third party, held that, before the declarations of a supposed conspirator, with whom plaintiff is charged to have conspired and colluded for the purpose of perpetrating a fraud on defendant in the sale of property, are admissible, there must be circumstances shown which reasonably point to the conclusion of a conspiracy. Affirmed.—HART V. HOPSON.

EVIDENCE—Local Option—Druggist.—Defendant was convicted on an information charging him with selling intoxicating liquors in violation of the local option law, held that, the court erred in permitting the State, on cross-examination over defendant's objection, to endeavor to show that the prescription was issued in bad faith by the physician, the motives of a physician in issuing a prescription are not relevant evidence in the trial of the druggist. Reversed.—STATE V. BEVANS.

FRAUD — Deceit—Damages.—In a trade between plaintiff and defendant, wherein plaintiff acted upon the statement contained in a letter and postal, of third parties, shown him by defendant as containing a description of the property so far as defendant knew, the defendant never having seen the property, of which fact he informs the plaintiff at the time, and there is no evidence that defendant did not make a full and fair statement of all that he knew, although the statements contained in postal and letter are false those facts alone will not support an action of deceit for damages. Affirmed.—HUME V. BRELSFORD.

INDEMNIFYING BOND — Mortgage.—In an action upon an indemnifying bond to protect constable against a claim made by appellant, where appellant claimed the goods levied upon by virtue of a chattel mortgage and mortgage contains the express condition, that the property therein sold and conveyed shall remain in mortgagors possession until certain conditions therein specified are broken, held that, until condition broken the mortgagor had the right of possession and property subject to levy and sale on execution. Affirmed.—SPRINGATE, TO USE OF NELSON DISTILLING CO. V. KOPPLEMAN FURNITURE CO.

INDEMNIFYING BOND—Misdescription.—Where a bond is given to indemnify relators against a levy upon 210 pieces of goods and under the evidence and instructions of the court the recovery is for the conversion of 230 pieces; when upon review of the whole record, it is clearly manifest that the judgment is for the right party, it will not be reversed, although errors may have intervened. Affirmed.—STATE, TO USE OF HAYES WOOLEN CO. V. BENEDICT.

INSTRUCTIONS — Evidence—Jury.—An instruction of the trial court, in a suit upon an account, directing the jury to find a verdict of a certain sum, thereby deciding as a matter of law that plaintiff had offered no substantial evidence in support of one item of the account, is not erroneous where plaintiff offered no substantial evidence from which a jury might logically infer that the item was a correct charge. A jury may draw inferences from evidence but such inferences must be logical deductions and not bare conjectures. Affirmed.—GERRAUS V. GEO. WENGER MFG. CO.

JUSTICE OF THE PEACE—Unlawful Detainer—Appeal.—On an appeal from a judgment, rendered in an action of unlawful detainer, by a justice of the peace, held that, the mode of taking and perfecting an appeal prescribed by the justice act does not apply to these cases, the circuit court being in session at the time the judgment of the justice was rendered, it was absolutely necessary that defendant, in order to perfect his appeal should have given such a recognizance as the statute requires within six days after the rendition of the judgment. §§ 5137, 5138, R. S. 1889. Affirmed.—HASTINGS V. HENNESSEY.

MALICIOUS PROSECUTION — Probable Cause—Instruction.—The question of probable cause on conceded facts, is a pure question of law, and on disputed facts is likewise a question of law, based upon the hypothetical finding of the jury, therefore held, that the refusal of defendants specific instruction, submitting the facts for the finding of the jury, where there was evidence tending to prove every element contained in that instruction, which facts if found did constitute a probable cause, was error. Reversed.—THOMAS V. SMITH.

MALICIOUS PROSECUTION — Malice.—Malice may be inferred from the want of probable cause, but the inference must be a logical deduction from the evidence, therefore held, that an instruction in which jury were told that if they found the prosecution was begun without probable cause, as defined in other instructions, they might infer the prosecution was malicious, was not prejudicial to defendant, where jury can logically infer from the evidence that the defendant did not act in good faith, but acted maliciously in causing the arrest. Affirmed.—LALOR V. BYRNE.